IN THE COURT OF SH. SYED ZISHAN ALI WARSI
ADDITIONAL SESSIONS JUDGE-04, NEW DELHI DISTRICT,
PATIALA HOUSE COURTS: NEW DELHI

Criminal Appeal No. 126/2025

DLND010026162025

IN THE MATTER OF:

SH. SHRI NIVASH
S/O HARI RAM
R/O NEAR POWER HOUSE SEWAH (32)
PANIPAT, HARYANA-132108

… Appellant

Versus

SH. SANTOSH KUMAR
S/O SH. HARI CHARAN SHAHU
R/O DEFENCE APARTMENT,
B-4 SHIV MANDIR KAKROLA VILLAGE,
DELHI-110078 **… Respondent**

Date of Institution	**:**	**22.04.2025**
Date of conclusion of arguments	**:**	**12.01.2026**
Date of Judgment	**:**	**06.02.2026**

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JUDGMENT

1. The present appeal u/s 415 BNSS is filed against judgment dated 04.02.2025 whereby the appellant has been convicted for offence punishable u/s 138 NI Act and order on sentence dated 12.03.2025 whereby the appellant has been directed to pay compensation of Rs. 6,00,000/- (Rupees Six Lac Only) to the complainant, in default SI for 2 months.

BRIEF FACTS AS STATED IN THE COMPLAINT

2. Brief facts leading to the filing of complaint under Section 138 of Negotiable Instrument Act (hereinafter referred to NI Act) is that the accused/appellant being the relative of complainant/respondent had approached the complainant in the month of January 2019 for the small investment with the assurance of high return in the form of committee and told the complainant that he will get an amount Rs.5,10,000/- after paying 15 installments as per the bid. It is alleged that the complainant agreed for the said investment and paid the installments as and when demanded by the accused and after completion of 15 months the complainant requested the accused to return the assured amount of Rs.5.10,000/- but the accused avoided him on one pretest or other. It is alleged that after much deliberation, persuasion and repeated follow ups by the complainant, the accused issued a cheque no. 000067 dated 25.05.2021 for an amount of Rs.5,00,000/- drawn on ICICI Bank towards the repayment of the said investment and assured that the said cheque would be honoured upon presentation. It is also stated that the cheque guaranteed inter alia the payments of the legal debts and dues payable the complainant.

3. It is also stated that the complainant/respondent presented the aforesaid cheque for clearance to its banker namely State Bank of India, Delhi, but the said cheque was returned unpaid by the banker of the accused with the remarks “Funds Insufficient” vide cheque returning memo dated 14.07.2021. That thereafter the complainant issued a legal notice dated 11.08.2021 by speed post with respect to the dishonour of cheque calling upon the accused to pay the cheque amount within 15 days from the receipt of the notice. Notice was duly served upon the accused but despite that accused did not comply with the same. Since the accused/appellant failed to pay the amount of the cheque in question within the statutory period of 15 days from the receipt of legal demand notice, hence, the complainant has moved the Trial Court with the complaint under Section 138 of NI Act.

4. In order to prove his case, before the Ld. Trial Court, the complainant in his statement has adopted his affidavit i.e. Ex.CW-1/A where in the complainant affirmed the facts stated in the present complaint and relied upon the following documents:

-Original cheque dated 25.05.2021 at Ex. CW-1/1.
-Bank Return memo dated 14.07.2021 at Ex. CW-1/2.
-Legal Demand Notice dated 11.08.2021 at Ex. CW-1/3.
-Postal receipts dated 11.08.2021 at Ex. CW-1/4.
-Internet generated tracking report at Mark A.

5. The accused in his admission / denial of documents u/s 294 Cr.P.C. has admitted the genuineness and correctness of the following documents:

-Original cheque dated 25.05.2021 at Ex. CW-1/1.
-Bank Return memo dated 14.07.2021 at Ex. CW-1/2.
-Legal Demand Notice dated 11.08.2021 at Ex. CW-1/3.
-Postal receipts dated 11.08.2021 at Ex. CW-1/4.

-Internet generated tracking report at Mark A.

6. In the memorandum of statement of accused u/s 313 Cr.P.C. recorded on 17.08.2022 without oath wherein all the incriminating circumstances appearing in evidence against the accused were put to him which he denied. He stated that in October 2019, he was not in any financial crises and did not ask for any loan from the complainant. He further stated that the complainant insisted for giving of loan on interest and was supposed to give the same to one Parvinder through him. It was stated that the complainant forced and put pressure on him to give the cheque in dispute to him. He further averred that the complainant had given Rs.5,00,000/- to him by way of cheque and had asked him to give the money to one Parvinder. The accused also stated that the said Parvinder ran away with Rs.5 Lacs which he had given to him in cash and complainant pressurized him to give the cheque in dispute to him. It is also came is his statement that the complainant had telephoned him and asked him to give for sometime for arranging the money as he had suffered losses in his business and could not make the payment. He also stated that he had also given Rs.2,00,000/- to Parvinder along with Rs.5,00,000/- of the complainant but he ran away with the money. He also stated that he received the demand notice of the complainant. He said that he had given two cheques in total to the complainant and after handing over the first cheque, the complainant told him that he had misplaced the same and asked him to give another cheque. He gave him the second cheque and both the cheques have been misused by the complainant. He admitted that he had received the legal demand notice of the complainant.

7. On the basis of the material and evidence adduced by the parties, the Ld. JMFC convicted the appellant for the offence u/s 138 NI Act.

GROUNDS OF APPEAL

8. The appellant has challenged the impugned judgment and order on sentence on the ground that the complainant on the basis of wrong facts filed the complaint and the fact of 15 small installments for the payment of amount was wrong. That in cross-examination the complainant has stated that the accused is nephew of brother-in-law of complainant and also related to the complainant from his mother side and complainant gave Rs.5 Lacs to the accused by way of deposit in the committee and the complainant do not know that the committee is legal or to invest in the committee is legal or the committee is running with proper license or without any license. It is also stated that the complainant has not produced any bank transaction to show the transfer of amount deposited in the account of accused / applicant. The accused has stated that Parvinder ran away with all deposited amount in the committee alongwith his deposit of Rs.2 Lac and complainant being his relative put pressure on him and due to that the accused has given two cheques to the complainant which is in dispute in this case. It is also stated that the Ld. Trial Court has failed appreciate the fact that the complainant had given amount of Rs.5 Lacs to the appellant / accused in 15 installments but there is no any documentary record produced by the complainant that he has paid 15 installments to the accused.

It is prayed that the judgment dated 04.02.2025 and order on sentence dated 12.03.2025 be set aside.

ARGUMENTS ON BEHALF OF LD. COUNSEL FOR APPELLANT

9. Ld. Counsel for appellant has argued that there is no liability of the accused/appellant towards the complainant / respondent and the cheque in question was handed over to the complainant due to the pressure of complainant. The same was handed over at the time when a wedding was going on at the house of the accused/appellant and he did not want the complainant to create a scene in front of all the people. Further, the cheque was not issued for legally enforceable debt or liability and the cheque was taken under pressure for the purpose of securing the repayment of money from Parvinder. It is prayed that the appellant be acquitted in the present case and the impugned judgment and order on sentence be set aside.

ARGUMENTS ON BEHALF OF LD. COUNSEL FOR COMPLAINANT / RESPONDENT

10. It is argued by Ld. Counsel for complainant/respondent that there is no infirmity in the impugned judgment and order on sentence. He argued that the accused has already admitted his signatures on the cheque in dispute and hence the presumption of the cheque in question having been issued in discharge of a legally enforceable debt or liability is in favour of the complainant in terms of section 118

(a) read with section 139 of the NI Act. He further submitted that the accused has admitted his liability in the notice framed under section 251 Cr.P.C. as he has stated that he is willing to pay the amount to the complainant and has also admitted to the receipt of the legal demand notice of the complainant. It is prayed that the present appeal be dismissed.

ANALYSIS AND FINDINGS

11. Heard Ld. Counsel for appellant, Ld. Counsel for complainant/respondent and perused the appeal file as well as the Trial Court Record.

12. As the appellant is convicted u/s 138 of NI Act, it is essential to consider Section 138 of NI Act which is reproduced as follows:

> "**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

Syed Zishan Ali Warsi Digitally signed by Syed Zishan Ali Warsi Date: 2026.02.06 18:22:26 +0530 bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions 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."

Explanation- For the purposes of this section, "debt or other liability" means a legally enforceable debt or other liability.

13. Thus, the essential ingredients for Section 138 NI Act is as follows:

(i) a person must have drawn a cheque, on an account maintained by him in a bank for payment of a certain amount of money to another person from out of that account for the discharge, in whole or in part, of any legally enforceable debt or other liability:

(ii) that the cheque has been presented to the bank within a period of three months from the date on which it is drawn or within the period of its validity,

> whichever is earlier:
>
> (iii) that the cheque has been returned by the drawee bank unpaid. either for the reason that 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;
>
> (iv) that the payee or the holder in due course of the cheque has made a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within 30 days of the receipt of information from the bank regarding the return of the cheque as unpaid;
>
> (v) that the drawer of such cheque fails to make the payment of the said amount of money to the payee or holder in due course within 15 days of receipt of the said notice.

14. In the present case, the appellant has admitted drawing of the cheque and also admitted the documents with regard to the presentation, dishonouring and receiving of the notice for demand of payment and it is also not the case of the appellant that he has made the payment. Thus, essential conditions required for Section 138 NI Act are fulfilled. Now, the only question remains that whether the cheque was issued for discharge of legally enforceable debt / liability or not.

15. It is relevant to consider here Section 139 of NI Act which are reproduced as follows:

> "**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."

15.1. Thus, a presumption u/s 139 NI Act is that the holder of the cheque that the complainant has received the cheque for the discharge, in whole or in part, of any debt or other liability. Now, it is for the appellant to rebut the presumption on the basis of preponderance of probabilities. It is also relevant to consider that the Hon'ble Supreme Court in ***Basalingappa v. Mudibasappa; (2019) 5 SCC 418;*** decided on 09.04.2019, summarized the law. The following was laid down in para 25: which is reproduced as below:

> *"25. We have noticed the ratio laid down by this Court in the above cases on sections 118(a) and 139, we now summarise the principles enumerated by this Court in following manner:*
>
> *25.1. Once the execution of cheque is admitted section 139 of the Act mandates a presumption that the cheque was for the discharge of any debt or other liability.*
>
> *25.2 The presumption under section 139 is a rebuttable presumption*

and the onus is on the Accused to raise the probable defence. The standard of proof for rebutting the presumption is that of preponderance of probabilities.

25.3 To rebut the presumption, it is open for the Accused to rely on evidence led by him or the Accused can also rely on the materials submitted by the Complainant in order to raise a probable defence. Inference of preponderance of probabilities can be drawn not only from the materials brought on record by the parties but also by reference to the circumstances upon which they rely.
25.4 That it is not necessary for the Accused to come in the witness box in support of his defence, section 139 imposed an evidentiary burden and not a persuasive burden.

25.5 It is not necessary for the Accused to come in the witness box to support his defence."

16. In the present case, for notice u/s 251 Cr.P.C. the appellant has stated that the cheque in dispute bears his signature and the date, amount are in his handwriting and he also admitted that the addresses in the demand notice is correct and he also received the notice. He also stated that the complainant had handed over Rs.5 Lacs to him for investment with one of his relatives namely Parvinder. The cheque in dispute was taken from him under pressure and he did not take any friendly loan from the complainant and he is still willing to pay the amount but he need 03 years time. In the memorandum of statement of accused u/s 313 Cr.P.C. he stated that in October 2019, he was not in any financial crises and did not ask for any loan from the complainant. He further stated that the complainant insisted for giving of loan on interest and was supposed to give the same to one Parvinder through him. It was stated that the complainant forced and put pressure on him to give the cheque in dispute to him. He further averred that the complainant had given Rs.5,00,000/- to him by way of cheque and had asked him to give the money to one Parvinder. The accused also stated that the said Parvinder ran away with Rs.5 Lacs which he had given to him in cash and complainant pressurized him to give the cheque in dispute to him. It is also came is his statement that the complainant had telephoned him and asked him to give time for arranging the money as he had suffered losses in his business and could not make the payment. He also stated that he had also given Rs.2,00,000/- to Parvinder along with Rs.5,00,000/- of the complainant but he ran away with the money. He also stated that he received the demand notice of the complainant. He said that he had given two cheques in total to the complainant and after handing over the first cheque, the complainant told him that he had misplaced the same and asked him to give another cheque. He gave him the second cheque and both the cheques have been misused by the complainant. He admitted that he had received the legal demand notice of the complainant.

17. In the present case, the defences taken by the accused at the time of Section 251 Cr.P.C. notice and Section 313 Cr.P.C. statement are contradictory as in Section 251 Cr.P.C. notice the defence "*for investment*" with Mr. Parvinder is taken while u/s 313 Cr.P.C. statement "*give loan*" to Parvinder is stated. Also, in defence u/s 251 Cr.P.C. the accused has specifically stated that he is willing to pay the amount but needs 03 years time. Thus, the appellant has admitted his liability for payment.

18. Before proceeding further, the fact with regard to issuance and signing of cheque is not disputed by the appellant and as per the provisions of the NI Act, once a dishonoured cheque is found to be carrying the signature of accused and such a cheque was dishonoured for insufficiency of funds and no payment was made despite issuance of legal demand notice, then by virtue of Section 118 and 139 of NI Act, presumptions of existence of legally recoverable debt comes into play.

19. Further, the observations and findings of the Ld. Trial Court is made after proper appreciation of the evidence on record as can be seen from the following paras of the Ld. Trial

Court's judgment which is reproduced as below:

> *"......30. The Accused took the defence that the cheque in question was handed over to the complainant under pressure from him.However, except oral testimony of the Accused in this regard, there is nothing on record to substantiate the said claim of the Accused. The counsel for the accused at the time of the final arguments also averred that there was marriage ceremony at the house of the accused and the complainant came to the house of the accused and pressured him to hand him the cheque in question. It is worthwhile to note that the handing over of the cheque in question happened at a place where a wedding was going on with many people around, and as averred by the counsel for the accused, the same was under the pressure of the complainant, but none of the relatives was examined as a witness to show that the complainant had pressurised the accused to handover the cheque to him. It appears that there was no such pressure as alleged by the accused given the position that no eye witness was produced.*
>
> *31. Moreso, the testimony of the Accused does not inspire much confidence of this court as he has taken contrary stands at different stages of the trial. At the time of the framing of the notice u/s 251 CrPC the accused stated that Rs. 5,00,000/- was given by the complainant to him for the purpose of investment with his relative Parminder. However a different version was given at the time of the statement of aceased u/s 313 CrPC that*

the complainant insisted giving of loan on interest to the accused and he was also supposed to give the same to Parminder. Also while recording of the statement of the accused under section 313 CrPC, it was stated that two cheques were handed over to the complainant. There was no mention of the second cheque being handed over to the complainant at the time of the framing of the notice u/s 251 CrPC and this makes the story of the accused all the more doubtful.

32. The accused has neither brought on record any cogent evidence in the form of any steps taken by him to get back the cheque in question supposedly taken under pressure from him by the complainant nor any complaint has been made on his behalf to the bank or public authorities regarding the alleged misuse of his cheque. Non issuance of stop payment instructions to the bank also causes doubt to lurk around the story of the accused. He thus failed to adduce any credible evidence to show that he indeed did everything within his power and control, as a reasonable and prudent person would, to ensure that the the cheque in question issued by him was not misused. It is also pertinent to note that at different stages of the trial the accused has stated that he was willing to pay the amount to the complainant and had only sought time for the same. These averments of the accused show that he did owe liability towards the complainant and due to business losses was only buying time to discharge the same.

33. Mere denial of the case of the Complainant with oral averments, supported by no documents or evidence, leave alone, cogent one is not going to assume any evidentiary value and averments in notice of accusation and in his examination under Sec-313 Cr.P.C read with Sec-281 Cr.P.C would not assume the character of defence evidence as mere denial is not sufficient. Reliance in this regard is placed upon the judgment of Hon'ble High Court of Delhi in V.S. Yadav Vs. Reena, (2010) 172 DLT 561.

34. In addition to above, on holistic consideration of the record, it is apparent on the face of the record that no credibility can be perceived in the defence attempted to be set up by the Accused.

35. In view of the above discussion, the evidence presented on behalf of the Complainant gains credibility and instils confidence in the Court regarding the material aspects of the Complaint. The narrative of the Complainant remains consistent and coherent supported by documentary evidence in stark contrast to the mere oral version provided by the Accused.

36. The Accused's admission of his signature on the cheque is pivotal, and when combined with the presumption raised under Sections 118 and 139 of the Negotiable Instruments Act, all the necessary elements of Section 138 of the same Act have been *adequately established by the case of the Complainant. The defence of the Accused was primarily based on the assertion that no legally enforceable liability existed on the date when the cheque in question was presented and the same was handed over to the complainant under pressure. However, the Accused has failed to meet the burden of proof, failing to provide convincing evidence that tilts the balance of probabilities in his faveur. Consequently, the presumption raised against the Accused remains unchallenged and stands firm.*

37. The culmination of the above analysis leads to the conclusion that all the essential elements required under Section 138 of the Negotiable Instruments Act are satisfactorily met with respect to the Accused. The case of the Complainant stands on a firm foundation, while the defence of the Accused is riddled with inconsistencies and lacks persuasive evidence, failing to create any reasonable doubt in the version put forth by the Complainant."

20. In view of the discussion held in the foregoing paras of this judgment as well as the fact that the accused except for his contradictory defences has not laid any cogent or credible or corroborating evidence to substantiate his defence and no witness or documentary proof or evidence of Parvinder is brought on

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record by the appellant. On the other hand, the evidence laid by the complainant is cogent, consistent and credible and remained irrebutable in the cross-examination. Thus, this court is not able to agree with the grounds or arguments put by the counsel for appellant that the cheque was taken under pressure and misused and was given for Parvinder. As claimed by the appellant that the cheques were taken on the wedding occasion but no witness was examined to show that at the time of wedding, the cheque was obtained under pressure. Thus, The appellant has failed to rebut the presumption u/s 139 NI Act on the basis of preponderance of probabilities and the complainant has proved his allegations beyond reasonable doubt.

21. As regards the order on conviction and sentence, although no sentence was passed by the Ld. Trial Court of imprisonment for offence punishable u/s 138 NI Act which deems to be on the lesser side, however, no appeal is filed by the complainant before this court for the enhancement of the same. Thus, this court deems it appropriate not to interfere with the legally appropriate and correct order passed for conviction and sentence by the Ld. Trial Court dated 04.02.2025 whereby the appellant has been convicted for offence punishable u/s 138 NI

Act and order on sentence dated 12.03.2025 whereby the appellant has been directed to pay compensation of Rs. 6,00,000/- (Rupees Six Lac Only) to the complainant, in default SI for 2 months.

22. In view of the above discussion and reasoning, this Court does not find any merit in the appeal. **Accordingly, present appeal is dismissed. The impugned judgment dated 04.02.2025 and order on sentence dated 12.03.2025 are upheld.** Parties to bear their own cost of appeal.

TCR be sent back alongwith the copy of this judgment. Trial Court be intimated accordingly. Appeal file be consigned to Record Room after necessary compliance.

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Announced in the open court on 06.02.2026

SYED ZISHAN ALI WARSI
ADDL. SESSIONS JUDGE-04,
NEW DELHI DISTRICT,
PATIALA HOUSE COURTS,
NEW DELHI/06.02.2026