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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

***Date of Decision: 27th March, 2025***

\+ CRL.L.P. 203/2025

SANJEEV SINGH CHAUHAN .....Petitioner

Through: Mr. Ajit Nair, Advocate.

versus

TRILOK SINGH .....Respondent

Through: *Appearance not given.*

**CORAM:**
**HON'BLE MR. JUSTICE SANJEEV NARULA**

**JUDGMENT**

**SANJEEV NARULA, J. (Oral):**

**CRL.M.A. 9248/2025***(seeking condonation of delay)*

1. For the grounds and reasons stated in the application, the same is allowed. Delay of 65 days in filing the appeal is condoned.

2. Disposed of.

**CRL.M.A. 9249/2025***(seeking exemption)*

3. Exemption is granted, subject to all just exceptions.

4. The Petitioner shall file legible and clearer copies of exempted documents, compliant with practice rules, before the next date of hearing.

5. Accordingly, the application stands disposed of.

**CRL.L.P. 203/2025**

6. The present application under Section 419(4) of the Bharatiya

Nagarik Suraksha Sanhita, 2023[1] seeks leave to appeal against the judgment dated 19th November, 2024 passed by the JMFC (NI Act-03), Patiala House Court, New Delhi, in CC No. 13496/2019, titled as ***"Sanjeev Singh Chauhan v. Trilok Singh"***, whereby the Trial Court has acquitted the Respondent for the offence under Section 138 of the Negotiable Instruments Act, 1881.[2]

***Factual Background***

7. The relevant facts of the case, as set out in the complaint are summarised as follows:

7.1 In May 2017, the Petitioner advanced a friendly loan of ₹10,00,000/- to the Respondent, who is stated to be a personal acquaintance. The loan was disbursed partly by way of cheque for ₹2,00,000/-, and the remaining amount was paid in cash.

7.2 At the time of receiving the loan, the Respondent executed a mortgage deed in favour of the Petitioner and undertook to repay the amount in 32 monthly instalments of ₹21,000/- each. However, the Respondent defaulted and failed to pay any of the agreed instalments.

7.3 Subsequently, the Respondent issued a cheque bearing No. 024562 towards discharge of his liability. The said cheque, when presented for encashment on 16th August, 2019, was returned unpaid due to insufficient funds in the Respondent's account.

7.4 Following this, the Petitioner issued the statutory legal notice dated 20th August, 2019 under Section 138(b) NI Act, calling upon the Respondent to make the payment for the amount of dishonoured cheque. However, the

[1] "BNSS"
[2] "NI Act"

Respondent failed to make the outstanding payments, leading to the filing of the complaint for the offence under Sections 138 NI Act.

*Proceedings before the Trial Court*

7.5 On the basis of the complaint, the Trial Court took cognizance and summoned the Respondent. Upon appearance, notice under Section 251 of the Code of Criminal Procedure, 1973[3] was served, to which the Respondent pleaded not guilty and claimed trial.

7.6 In support of his case, the Petitioner examined himself as well as CW-1 and one Sh. Sanjay Kumar, CW-2. The Petitioner adduced evidence to prove the following documents:

| | | |
|---|---|---|
| 1. | Original cheque in question | Ex-CW1/1 |
| 2. | Original bank return memo | Ex-CW1/2 |
| 3. | Legal demand notice | Ex-CW1/3 |
| 4. | Postal receipt of speed post and delivering detail | Ex-CW1/4 |
| 5. | Bank account statement from 01.04.2017 to 30.08.2017 | Ex-CW1/X1 |
| 6. | ITR of Sh. Sanjay for the period 2017-2018 | Ex-CW1/X2 |
| 7. | ITR of Ms. Kiran for the period 2018-2019 | Ex-CW1/X3 |

7.7 At the same time, Sh. Sanjay Kumar, CW-2, relied upon following documents:

| | | |
|---|---|---|
| 1. | Statement of bank account for the period 01.04.2021 to 31.03.2022 | Ex-CW-2/XX1 |

[3] "CrPC"

| | | |
|---|---|---|
| 2. | Salary slips for the month July, 2019 till November, 2019 | Ex-CW-2/XX2 |

7.8 Subsequently, in the statement recorded under Section 313 CrPC, the Respondent denied liability and alleged misuse of the cheque by the Petitioner. However, the Respondent did not lead any defence evidence. The statement of the Respondent under Section 313 CrPC reads as follows:

> *"Q1. All the incriminating evidence has been put to the accused and the accused has been asked as to what he has to say?*
> *Ans. I have signed the cheque in question. I have not filled the particulars on the same. I have received the legal notice. L have taken an amount of Rs. 1,65,000/- from the complainant in two installments of Rs. 1,25,000/- and Rs. 40,000/- respectively by way of cheque. The cheque in question was given to the complainant only far security purposes and the same has been misused by the complainant. I am ready & willing to pay Rs. 1,65,000/- to the complainant. I have no liability equivalent to the amount of cheque in question. This is a false case against me.*
> *Q2. Do you wish to lead DE.*
> *Ans. No."*

7.9 Based on the material on record and the evidence led by the parties, the Trial Court proceeded to deliver the impugned judgment, whereby the Respondent was acquitted of the offence under Section 138 of the NI Act.

***Petitioner's grounds of challenge***

8. Aggrieved by the impugned judgment of acquittal, the Petitioner has preferred the present application seeking leave to appeal, raising the following grounds:

8.1 The Trial Court failed to properly apply the statutory presumptions under Sections 118(a) and 139 of NI Act. Once the execution of the cheque is admitted, as in the present case, there arises a presumption in favour of the holder that the cheque was issued for the discharge, in whole or in part, of a legally enforceable debt or liability. This presumption is rebuttable in nature,

but the burden lies squarely on the drawer of the cheque to disprove the existence of such liability by leading cogent and credible evidence. In the present case, the Respondent unequivocally admitted to having signed and issued the cheque in question. However, beyond a bare assertion that the cheque was given as "security," no substantive defence was raised, nor was any evidence adduced to rebut the presumption. It is well-settled that a mere plea that the cheque was issued as security, without anything more, cannot discharge the burden imposed under Sections 118 and 139 of the Act. In the absence of any supporting material or circumstances demonstrating that no debt or liability existed, the statutory presumption must stand.

8.2 The Trial Court erroneously reversed the burden of proof and rejected the complaint on the ground that the Petitioner failed to establish the underlying loan transaction. This approach is legally untenable, as it runs contrary to the settled legal position that the initial burden on the complainant shifted to the Respondent upon proof of execution of the cheque, which in this case stands admitted.

8.3 The finding that there was insufficient evidence to establish the loan overlooks the express provision under Section 139, which presumes that the cheque was issued in discharge of a legally enforceable liability. The Trial Court, instead of evaluating whether the Respondent had discharged the onus to rebut the presumption, wrongly insisted on documentary proof from the Petitioner, despite the statutory presumption operating in his favour.

8.4 The Respondent, in his statement under Section 313 CrPC, did not deny the signature on the cheque, nor did he lead any evidence to rebut the presumption. His sole defence that the cheque was given as 'security' remained uncorroborated by any material evidence. In this context, the

judgments in ***V.S. Yadav v. Reena***,[4] and ***Hiten P. Dalal v. Bratindranath Banerjee***[5] are squarely applicable, wherein it was held that the presumption under Section 139 can be rebutted only by cogent evidence, and not by a mere plausible explanation.

8.5 While certain discrepancies were observed in the narration of events regarding the disbursal of the loan, these were adequately clarified. The Petitioner and Respondent were friends, and the Respondent is stated to have borrowed a sum of ₹10 lakhs from the Petitioner on 10th May, 2017. Out of this amount, ₹8 lakhs was paid in cash and ₹2 lakhs by cheque. It is the Petitioner's case that the Respondent later returned the cheque and requested that the balance be paid in cash. The Petitioner managed to arrange ₹75,000/- in cash and issued another cheque for ₹1,25,000/- to make up the remaining amount. Although this factual sequence was not specifically mentioned in the initial complaint or supporting affidavit, it was clearly brought on record during the Petitioner's cross-examination and remains uncontroverted. The Trial Court, however, failed to take this explanation into account when evaluating the Petitioner's claim. This omission has resulted in a misreading of the evidentiary record and has materially affected the outcome of the case.

***Analysis***

9. In proceedings under Section 138 of the NI Act, the law creates a presumption in favour of the holder of the cheque that it was issued in discharge of a legally enforceable debt or liability. Section 118(a) of the Act presumes that the cheque was made or drawn for consideration, while

[4] 2010 SCC OnLine Del 3294.
[5] (2001) 6 SCC 16.

Section 139 mandates that the Court shall presume that the cheque was issued for the discharge of such liability. Once execution of the cheque is admitted or established, these statutory presumptions operate automatically in favour of the complainant. However, it is equally well-settled that these presumptions are rebuttable. The accused is entitled to demonstrate, by cogent material or circumstances, that the debt or liability did not exist at the time of issuance of the cheque. The presumption does not render the complainant's case infallible, it only shifts the initial burden, which can be discharged by the accused on a balance of probabilities.

10. However, the presumption under Section 139 is rebuttable. The accused is not required to conclusively prove a negative fact. Rather, the burden is to raise a probable defence sufficient to create reasonable doubt regarding the existence of a legally enforceable debt or liability. The Supreme Court, in ***Rajesh Jain v. Ajay Singh***,[6] held that the phrase *"unless the contrary is proved"* in Section 139 does not imply that the accused must necessarily prove the negative, *i.e.*, that the instrument was not issued in discharge of any debt or liability. Instead, it suffices if the accused can demonstrate that the existence of such liability is improbable, so as to persuade a prudent person, under the given circumstances, that no such debt existed.

11. The law permits the accused to rebut the statutory presumption in two distinct ways: first, by leading evidence to directly prove that no debt or liability existed; or second, by relying on circumstantial or inherent inconsistencies in the complainant's case to show, on a preponderance of probabilities, that the debt was not legally enforceable. The Supreme Court,

in ***Rohitbhai Jivanlal Patel v. State of Gujarat***,[7] observed that if the accused raises a plausible defence that creates doubts about the existence of a legally enforceable debt or liability, the burden shifts back to the complainant, and the presumptions under Sections 118 and 139 of the Act no longer benefit him. Thus, the law does not compel the accused to prove a negative. It merely requires the accused to place before the Court a defence that is credible and probable in the facts of the case.

12. In the present case, the issuance of the cheque and the signature thereon are admitted by the Respondent. However, a closer examination of the record shows that the Trial Court rightly found the statutory presumptions under Sections 118 and 139 to have been rebutted on a preponderance of probabilities. The Respondent, in his statement under Section 313 CrPC, clearly stated that the cheque was given only as security in respect of a smaller sum of ₹1,65,000/-, and not towards any legally enforceable liability equivalent to the cheque amount. Notably, the Respondent categorically denied having taken a loan of ₹10 lakhs, and asserted that the cheque was misused. The Respondent acknowledged his liability to the extent of ₹1,65,000/- and expressed his willingness to repay the same, however, he denied any liability for the amount mentioned in the cheque. Though he did not lead any defence evidence, his admissions and explanations were relevant for assessing whether the statutory presumption stood rebutted.

13. The central issue, therefore, is whether the defence so raised by the Respondent was sufficient to rebut the presumptions under Sections 118 and

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[6] (2023) 10 SCC 148.
[7] (2019) 18 SCC 106.

139 of the NI Act on the touchstone of preponderance of probabilities. In this regard, it is pertinent to refer to the detailed findings recorded by the Trial Court:

> *"19. In paragraph no.3 of the complaint, it has been stated by the complainant that out of total loan amount of Rs. 10,00,000/-, Rs.2 lakhs were given to the accused by way of cheque bearing no.791606. During cross-examination of CW-1 conducted on 19.12.2023, witness was shown Ex.CW-1/Xl i.e. statement of account of the complainant and was asked to show entry of Rs.2 lakhs given to the accused by way of cheque to which the witness deposed that there is an entry of Rs. 1,25,000/- which was given by him to the accused, however, the same has no entry of Rs.2,00,000/-as alleged by him in the complaint. The same corroborates the defence taken by the accused that he had taken a loan or Rs.1,65,000/- from the complainant in two installments of Rs.1,25,000/- and Rs.40,000/-. During cross-exan1ination of CW-1 conducted on 20.04.2023, CW-1 deposed before the court that he has not brought any documentary evidence to show that the said amount of Rs.2,00,000/- was paid to the accused by way of cheque bearing no. 791606. CW-1 further deposed that he had taken an amount of Rs.6 lakhs in cash from his sister-in-law which was paid to the accused. The said sister-in-law has not been produced before the court in order to show that said amount was advanced by her to the complainant to be advanced to the accused.*
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> *20. It is further stated by CW-1 that Rs.2 lakhs were arranged from one Sh.Sanjay and same was also given to the accused. CW-2 Sh. Sanjay has been examined by complainant in his defence.CW-2 has deposed before the court that he had paid the said amount of Rs.2 lakhs to the complainant in the month of May, 2017 at his residence. During his cross-examination. CW-2 despite many opportunities did not place on record statement of his bank account for the period 2016-2019 as he had stated before the court that the said amount of Rs.2 Lakhs was withdrawn by him from his bank account which was given to complainant. Further, he did not even produce the salary slips for the period 2016-2019 despite ample opportunities given to him to produce the same.*
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> *21. ln paragraph no.4 of the complaint, it has been stated by the complainant that accused had also executed a mortgaged deed in his favour, however, during cross-examination of complainant conducted on 20.11.2023, he admitted that the said alleged mortgaged deed has not been placed on record.*
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> *22. CW-2 has deposed before the court that the loan in question was given by the complainant to the accused for a period of one year for the marriage of his daughter. However, in the complaint it has been stated that the alleged loan amount was to be returned by the accused in 32 installments. There is an apparent contradiction.*

*23. The court is of the opinion that complainant has failed to prove his financial capacity to pay the alleged loan of Rs. 10,00,000/ - to the accused.*

*24. It is also imperative to understand that in order to pronounce a conviction in a criminal case, the accused 'must be' guilty and not merely 'may be' guilty. For an accused to be guilty, guilt should not be based on mere surmises and conjectures but it should be based on cogent evidence.*

*25. In view of the above discussion and in view of the judgments of Hon'blc Courts as stated above, the accused has been able to raise a probable defence and has been able to prove his defence on the basis of preponderance of probabilities that there is no legally enforceable debt or liability in favour of the complainant and against the accused equivalent to the amount of cheque in question as on the date of its drawal or on the date of its presentation. Thus, the accused has been able to rebut the presumption u/s. 118 r/w section 139 NI Act. Furthermore, the complainant has failed to prove his case beyond reasonable doubt qua the accused in respect of the cheque in question.*

*26. In view of the aforesaid, accused, namely, Trilok Singh S/o Sh. Ajit Singh is acquitted of offence under section 138 Negotiable Instruments Act."*

14. The Trial Court, after analysing the testimony of CW-1 and CW-2, noted material inconsistencies and shortcomings in the Complainant's version. The Petitioner's narrative that a loan of ₹10 lakhs was extended to the Respondent, of which ₹2 lakhs was given by a cheque, was entirely contradicted by him during his cross examination. When the Petitioner (CW-1) was confronted with the Respondent's statement of account, and asked to show the entry for the ₹2 lakh cheque, the Petitioner could only point to an entry for ₹1,25,000/-, and was unable to produce any evidence for the ₹2 lakh amount. This corroborates the defence's argument that the Respondent had taken a loan of ₹1,65,000/-, split into two instalments of ₹1,25,000/- and ₹40,000/-.

15. Further, the Petitioner deposed before the Trial Court that he had received an amount of ₹6 lakhs in cash from his sister-in-law, which was subsequently paid to the Respondent. However, during his cross-

examination on 20th November, 2023, the Petitioner admitted that he did not execute any guarantee or surety document when receiving the aforementioned amount from his sister-in-law. Significantly, the Petitioner also failed to examine his sister-in-law as a witness to corroborate his claim of borrowing ₹6 lakhs from her. As a result, the source of the said amount, as alleged by the Petitioner, remains unsubstantiated and unsupported by any evidence.

16. The Petitioner further claimed that an additional amount of ₹2 lakh was arranged from Sh. Sanjay Kumar, CW-2. However, this statement also remains unproven. CW-2 deposed before the Trial Court that he had indeed paid ₹2 lakh to the Petitioner in May 2017. He stated that he withdrew the said amount from his bank account and handed it over to the Petitioner. To substantiate this claim, CW-2 was granted multiple opportunities to provide the statement of his bank account for the period from 2016 to 2019. However, despite being given such opportunities, CW-2 failed to submit the relevant bank statement, nor did he produce his salary slips for the pertinent period. Consequently, the claim that the amount was withdrawn from his bank account remains unsubstantiated, and the suggestion of such a withdrawal remains unsupported by any documentary evidence.

17. As for the remaining ₹2 lakhs, which the Petitioner claimed to have advanced to the Respondent, he vaguely asserted that the amount was arranged "… *from friends, market and out of my own savings."* However, the Petitioner failed to disclose the identity of any such friends, or to specify the source or nature of the market-based funding. No supporting material, such as loan documents, receipts, or even a basic outline of the alleged financial arrangements, was placed on record. Furthermore, the Petitioner

did not produce his Income Tax Return[8] records for the relevant years to demonstrate his financial capacity or savings to extend the said loan. As such, the Petitioner has failed to substantiate his claim regarding the loan of ₹6 lakhs from his sister-in-law and ₹2 lakhs from CW-2, nor has he provided any proof of his financial ability to arrange for the remaining ₹2 lakhs from friends, the market, or his personal savings.

18. The Petitioner alleged in Paragraph No. 4 of the complaint that the Respondent had executed a mortgage deed in his favour as security for the loan. However, no such document was placed on record at any stage of the proceedings. When confronted on this aspect, during his cross-examination on 20th November, 2023, the Petitioner categorically admitted that the alleged mortgage deed had not been presented before the Court. As such, this specific averment made in the complaint also remains unsubstantiated.

19. Another aspect warranting mention is the inconsistency in the Petitioner's case regarding the terms of the alleged loan. In both the complaint and the affidavit by way of evidence, the Petitioner stated that the Respondent had agreed to repay the loan in 32 monthly instalments of ₹21,000 each. However, this assertion was contradicted by CW-2 during his cross-examination on 2nd August, 2024, wherein he deposed that the loan had been extended for a period of one year specifically for the marriage of the Respondent's daughter. This discrepancy between the Petitioner's version and the testimony of his own witness casts serious doubt on the veracity of the Petitioner's account and undermines the overall credibility of his claim.

20. In view of the foregoing discussion, this Court finds no infirmity in

[8] "ITR"

the Trial Court's conclusion that the Petitioner failed to establish his financial capacity to have advanced the alleged loan of ₹10 lakhs to the Respondent. This finding stands well-supported by the inconsistencies in the Petitioner's own evidence, the absence of corroborative documentation, and the failure to produce income tax returns reflecting the alleged loan transaction. On this issue, it would be profitable to take note of the recent judgment of the Supreme Court in ***Sri Dattatraya v. Sharanappa***,[9] where the Court upheld the acquittal of an accused in a cheque dishonour case, *inter alia*, on the ground that the complainant had failed to substantiate the loan transaction either through documentary evidence or by reflecting the same in his income tax returns. The Court further noted that contradictions in the complainant's deposition undermined the credibility of his claim and that, despite the presumption under Section 139 of the NI Act, the accused had succeeded in rebutting the same on a preponderance of probabilities. The relevant observations of the Court are as follows:

> *"27. Applying the aforementioned legal position to the present factual matrix, it is apparent that there existed a contradiction in the complaint moved by the Appellant as against his cross-examination relatable to the time of presentation of the cheque by the Respondent as per the statements of the Appellant. This is to the effect that while the Appellant claimed the cheque to have been issued at the time of advancing of the loan as a security, however, as per his statement during the cross examination it was revealed that the same was presented when an alleged demand for repayment of alleged loan amount was raised before the Respondent, after a period of six months of advancement.* ***Furthermore, there was no financial capacity or acknowledgement in his Income Tax Returns by the Appellant to the effect of having advanced a loan to the Respondent****. Even further the Appellant has not been able to showcase as to when the said loan was advanced in favour of the Respondent nor has he been able to explain as to how a cheque issued by the Respondent allegedly in favour of Mr Mallikarjun landed in the hands of the instant holder, that is, the*

[9] Crl. Appeal No. 3257/2024, decided on 7th August, 2024.

> *Appellant.*
> *28. Admittedly, the Appellant was able to establish that the signature on the cheque in question was of the Respondent and in regard to the decision of this Court in Bir Singh (supra), a presumption is to ideally arise.* ***However, in the above referred context of the factual matrix, the inability of the Appellant to put forth the details of the loan advanced, and his contradictory statements, the ratio therein would not impact the present case to the effect of giving rise to the statutory presumption under Section 139 of the NI Act 1881. The Respondent has been able to shift the weight of the scales of justice in his favour through the preponderance of probabilities.***
> *29. The Trial Court had rightly observed that the Appellant was not able to plead even a valid existence of a legally recoverable debt as the very issuance of cheque is dubious based on the fallacies and contradictions in the evidence adduced by the parties."*
> [Emphasis Supplied]

21. At this juncture, it is pertinent to deal with the Petitioner's contention that he had inadvertently failed to mention the issuance of a substitute cheque for ₹1,25,000/- in his complaint or his evidence by way of affidavit. According to his version, the initial loan of ₹10 lakhs comprised ₹8 lakhs in cash and ₹2 lakhs by cheque. He now claims that the Respondent returned the cheque and demanded cash instead, upon which he arranged ₹75,000/- in cash and issued a new cheque for ₹1,25,000/-. This revised narrative appears to be a mere afterthought, prompted by the Trial Court's finding that the cheque for ₹2 lakhs was not reflected in the Petitioner's bank statement. The Petitioner, in his complaint under Section 138 NI Act, as well as the affidavit filed before the Trial Court, unequivocally stated that he had provided ₹2 lakhs by cheque to the Respondent. This assertion forms the foundation of the Petitioner's case. It is implausible that he could have omitted such a material fact inadvertently. In fact, during his cross-examination on 20th April, 2023, he expressly affirmed that the payment was made *via* cheque No. 791606 drawn on State Bank of India, and offered to

produce his passbook in support. These contradictions point to an attempt to shift the narrative at the appellate stage, and the revised version now presented is nothing more than an effort to dilute the impact of the evidence and misrepresent the nature of the alleged transaction.

22. In view of the foregoing, the Trial Court rightly concluded that the Petitioner's failure to substantiate the source of the alleged loan, his inability to produce any supporting documentation such as bank records or income tax returns, and the inconsistencies in his testimony rendered his claim inherently improbable. The Respondent, through his cross-examination and the surrounding circumstances, successfully rebutted the statutory presumption under Section 139 of the NI Act. Applying the principles laid down by the Supreme Court in the decisions discussed above, this Court finds no perversity or legal infirmity in the Trial Court's reasoning. The impugned judgment, therefore, calls for no interference.

23. Dismissed, along with pending applications.

**SANJEEV NARULA, J**

**MARCH 27, 2025**
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