



UPKJ010034522025

In the Court of Sessions Judge, Kannauj

Presiding Officer - Chandroday Kumar (Higher Judicial Service) UP06553

Criminal Appeal No. - 76 /2025

Abhinat Kumar Gupta, 36 years of age, son of Rakesh Chandra, resident of Mohalla Shastri Nagar, G.T. Road, Town and Police Station Gursahaiganj, District Kannauj.

.....Appellant.

Versus

1. State of U.P.
2. Vishal Gupta, son of Sushil Kumar Gupta, resident of Mohalla Kidwai Nagar, Town and Police Station Gursahaiganj, District Kannauj.

.....Respondents.

JUDGMENT

Introduction

This appeal is directed against the judgment and sentence dated 14.07.2025 passed by the ACJM, Kannauj, in Complaint Case No. 66/2018 (Vishal Gupta v. Abhinat Kumar Gupta) under Section 138 of the Negotiable Instruments Act (NI Act). The Appellant (accused) was convicted of dishonouring a cheque of Rs.35,00,000/- and sentenced to pay a fine of Rs.38,00,000/- (with 6 months imprisonment in default) for purportedly issuing that cheque to discharge a lawful debt. Being aggrieved, he has preferred this criminal appeal.

Points for Determination

2. The issues arising in this appeal may be formulated as follows:
 - i. Whether the complainant proved all essential ingredients of the offence under Section 138 NI Act beyond a reasonable doubt.
 - ii. Whether, having proved issuance and dishonour of the cheque, the statutory presumption under Section 139 NI Act (and Section 118(a)) shifted the burden to the accused to prove that the cheque was not issued in discharge of a debt or was stolen/misused.
 - iii. Whether the appellant has successfully discharged that burden by credible evidence (as by claiming the cheque was forged/stolen, and misused).

- iv. Whether the trial court properly appreciated the evidence for both sides, including the documentary evidence produced by the appellant.
- v. Whether any substantial error or infirmity vitiates the conviction, and if so, whether the conviction should be upheld or set aside on merits.

Summary of Lower Court Proceedings

3. The complainant (Vishal Gupta) alleged that he had deposited approximately Rs.35,00,000/- with Infocare company (through its agent, the appellant) on the promise of returns. When payment became due, the appellant gave a cheque dated 25.11.2017 for Rs.35,00,000/- (Cheque No.523545 of PNB, Gursahaiyaganj branch, drawn on the appellant's account) for settlement. The complainant presented the cheque on 02.01.2018, but it was returned dishonoured with an endorsement of "INSUFFICIENT FUNDS/STOP PAYMENT". The complainant sent the requisite 15-day notice on 09.01.2018 to the appellant demanding payment, but the appellant did not comply. Consequently, a complaint under Section 138 of the NI Act was filed, and the Magistrate took cognisance on 21.05.2018.

4. At trial, the complainant examined himself as PW-1 and produced the original cheque, bank return memo, and notice with registry receipt. The complainant's testimony was that the cheque was issued by the appellant, bearing his name and signature, and was dishonoured for insufficient funds. The complainant asserted he knew the appellant, deposited the cheque in his own Bank of Baroda account (No.28800100008002) on presentation, and on 02.01.2018 received the return memo. He sent a lawyer's notice on 09.01.2018, which was not answered. He denied that the cheque was blank or used fraudulently. The complainant produced as evidence the original cheque, the bank's dishonour memo (bearing the bank's stamp and signature), and the notice with acknowledgement receipt.

5. The appellant put forward a defence that his chequebook had been stolen from his office (Infocare branch), and that the cheque bearing his signature was misused by the complainant and two others without his authority. He submitted that he had informed the police about the theft. He relied on photostate documents, including a letter to the police reporting the lost cheques, a bank order freezing payments from his account, and a certified copy of an FIR (No. 1145/2017) under IPC Sections 406, 420, 467, 468, 471, and 120 B (against Infocare), as well as other company papers. The appellant did not testify personally, but filed these documents on record. He denied owing any debt to the complainant, pointing out that in another case (Cr. Case No.13/2018, Ankit Katiyar v. Abhinat), he was acquitted on identical allegations.

6. After considering both sides, the ACJM held that the complainant had proved all the ingredients of Section 138 of the NI Act. The court noted that the cheque was issued for a "legal debt or liability", and that the complaint was filed within three months of its presentation. It found that the presumption under Section 118(a)/139 arose once issuance and dishonour

were established, and the appellant failed to rebut it satisfactorily. The appellant's theft/misuse defence was disbelieved. The appellant was thus convicted and fined Rs.38,00,000/-. Feeling aggrieved, he now challenges this conviction.

Submissions of Parties

7. Learned counsel for the Appellant contends that the conviction cannot be sustained. It is submitted that there was no consideration or debt owed by the appellant to the complainant. The cheque was never meant to discharge any liability, but was fraudulently prepared by the complainant and others. The appellant's chequebook was stolen from his office, containing pre-signed cheques, of which the complainant fraudulently took one and filled in the details. The appellant promptly lodged a written report about the missing cheques at the local police station. He also filed an FIR (No.1145/2017) against the Infocare company after it fled, but he asserted that the complainant and his co-accused misused the blank cheque. The appellant relied on his documentary evidence (FIR copy, police memo, bank's stop-payment order, etc.) to show he had no liability toward the complainant. The trial court, it is argued, ignored this defence evidence and did not give him any opportunity to explain. The appellant notes that he was acquitted in a parallel case with the same factual matrix (*Ankit Katiyar v. Abhinat*, Cr. Case No.13/2018). Learned counsel submits that, on the merits, the complainant failed to prove the debt or the drawer's liability, and thus the conviction is unsustainable.

8. Learned counsel for the Complainant (Respondent No.2) and the State resist the appeal. It is argued that the essential ingredients of Section 138 are amply proved: the cheque was drawn on the appellant's account, was presented within three months and returned dishonoured, and notice was given. Once these facts are established, a statutory presumption under Section 139 of the NI Act is attracted. Under Section 139 read with Section 118(a), the law presumes the cheque was issued for payment of a legally enforceable debt, until the drawer proves the contrary. The burden thus shifted onto the appellant to show non-existence of debt or fraudulent misuse (Pl. see Hon'ble Apex Court's case law [Rajesh Jain vs Ajay Singh on 9 October, 2023: 2023INSC888](#) and [Tedhi Singh vs Narayan Dass Mahant on 7 March, 2022: CRIMINAL APPEAL NO.362 OF 2022](#)). Merely alleging theft or misuse is not enough; there must be credible proof of the same. The complainant's version is supported by the original documents and his unshaken testimony. The supposed criminal case or the acquittal in another complaint case are irrelevant to the issue of the cheque's dishonour liability. Learned counsel emphasises that if the drawer seeks to escape liability, he must place clear evidence on record to rebut the presumption. In this case, the appellant has not done so; on the contrary, his explanation (claiming a stolen cheque) is uncorroborated and improbable. They submit that the appeal is without merit and the conviction should be upheld.

Appreciation of Evidence

9. I have carefully considered the evidence on record and the arguments of both sides. The complainant's case rests on the cheque issuance, dishonour, notice and non-payment. These facts are primarily established by the complainant himself (as PW-1). He produced the original cheque dated 25.11.2017 for Rs.35,00,000/-, drawn on Punjab National Bank, Gursahaiganj, A/c No.6433000100027464 in his name, signed by the appellant. The cheque bears the drawer's name, "Abhinat Kumar Gupta", and his signature. The complainant's testimony was that the appellant handed him this cheque in settlement of money owed. He deposited it in his State Bank of Baroda account (No.28800100008002) on presentation. The bank returned it on 02.01.2018 with the endorsement "Insufficient funds/cheque stopped". He promptly sent a lawyer's notice on 09.01.2018 demanding payment, and the appellant did not pay the amount or respond. Thus, prima facie, all the ingredients of Section 138 NI Act – (i) issuance of cheque for debt, (ii) presentation within three months, (iii) dishonour for insufficiency, (iv) notice given and (v) failure to pay within 15 days – appear to be satisfied. The original return memo and the notice with registry acknowledgement that the complainant exhibited support these facts.

10. In cross-examination, the complainant admitted he knew the appellant from their employment at Infocare for about 15 years. He stated that he had worked as an agent and was to receive commission money, but he never received it. He denied receiving payment at any point. He denied any ulterior motive or wrongdoing on his part, emphatically rejecting the suggestion that he fraudulently took a blank cheque or misused it. He also confirmed that two other persons (Ankit Katiyar and Jitendra Kumar) had filed similar complaints against the appellant, and he was aware of those cases. He testified that when the appellant left town after Infocare collapsed, he repeatedly went to the appellant's house seeking his money, but was rebuffed with abuse. Ultimately, having no alternative, he served legal notice and filed the complaint.

11. The appellant chose not to testify or call any oral witness. He relied solely on documentary evidence of a contrary character. In his written submissions (and Section 313 statement), he maintained that the cheque bounce case against him was false. He placed on record photocopies of: (a) a written letter to the Station House Officer reporting lost cheques, (b) an illegible bank order instructing banks not to honour any cheques from his account (date is also not clear), and (c) the FIR No.1145/2017 lodged by him under IPC Sections 406,420,467,468,471,120B against Infocare company (which mentions scheming by others). He also filed some company business papers, an identity card and newspaper cuttings. However, these documents do not directly contradict the complainant's case. The FIR No.1145/2017 relates to alleged criminal breach/cheating by Infocare, not specifically to the transaction with this complainant. Moreover, he did not produce any certified statement from the police or bank verifying the theft or forgery. The

prosecution did not contest the admissibility of these documents, but they stand uncorroborated by viva voce testimony.

12. It is well settled that once the complainant has established the basic facts of Section 138 (issuance, dishonour and notice), Section 139 of the NI Act creates a rebuttable presumption that the cheque was issued for the discharge of a debt or other liability. In other words, the law presumes the allegations in the complaint are true. Thereafter, it is incumbent on the accused to rebut this presumption by showing, based on relevant and credible evidence, that no debt existed, or that the cheque was otherwise invalid (for example, stolen, forged or misused). The Hon'ble Supreme Court has emphasised in the **Rajesh Jain** (supra) case that the presumption is "strong" and favours the holder of the cheque. A mere denial or unsubstantiated claim by the drawer is not sufficient to discharge the burden; he must lead positive proof. Once issuance of the cheque is proved, the onus is on the accused to rebut the presumption of liability – it is a "fundamental error" to shift the burden back on the complainant to prove the underlying loan or debt. In this case, the complainant discharged his initial burden through documents and testimony. The legal question is whether the appellant's materials suffice to rebut the statutory presumption.

13. Turning to the appellant's defence, I note that no admissible evidence was led to prove theft and misuse directly. The mere filing of an FIR against Infocare, or a letter to the police, without independent corroboration, is of limited value. Crucially, the appellant has not produced a single witness or expert (for example, a handwriting expert) to verify that the cheque was forged. Nor did he adduce the evidence instructing the bank to stop payment of cheques. The complainant's testimony that he was given the cheque in the presence of the appellant, and that no one else was involved when it was filled out, remains uncontradicted. The fact that the appellant's alleged stolen cheques contained multiple signed blanks (admitted by the appellant) makes fraud possible in theory, but without proof of the thief or intermediary, it remains only a conjecture. No one keeps blank signed cheques. The appellant's reliance on acquittal in another case (Ankit's case) does not help, since that case had its own facts and no estoppel arises from it.

14. In short, the complainant's case is supported by the original cheque, return memo and notice, together with a straightforward narrative, whereas the appellant's defence rests on unsupported allegations of theft/fraud. Given the strong statutory presumption, and in the absence of persuasive proof to the contrary, the balance of probabilities tilts in the complainant's favour.

Findings

15. I address the points for determination:

- i. **Issuance and dishonour:** The record clearly shows that the cheque in question was issued by the accused in favour of the complainant, and

was presented within its validity period. The bank return memo (dated 02.01.2018) confirms that it was dishonoured for insufficient funds. These facts are not in dispute.

- ii. **Notice and lapse of payment:** The complainant sent a valid demand notice on 09.01.2018. Proof of dispatch and the unreturned acknowledgement receipt are on record. More than 15 days elapsed thereafter without payment. Thus, the procedural requirements of Section 138 are satisfied.
- iii. **Presumption under Sections 118(a) and 139 NI Act:** Once these basic facts are established, the statutory presumption operates. The court must assume the cheque was issued for the discharge of a debt or other liability. Once having proved the issuance, the burden shifted to the accused to show the contrary.
- iv. **Appellant's rebuttal evidence:** The appellant's burden was to prove on record, by cogent evidence, that the cheque was not given for a debt or was otherwise invalid. In examining his defence, I find it lacking in material respects. He did not provide a contemporaneous FIR specifically mentioning the stolen cheque No.523545 or a statement from the bank that the cheque had been unauthorised. The documents filed (FIR and police memo) do not directly impugn the complainant's version. The appellant did not explain how the blank was filled or by whom. On these facts, no reasonable doubt is raised about the genuineness of the transaction.
- v. **Appreciation by the trial court:** The trial court concluded that the complainant succeeded in proving that the cheque was issued for a lawful debt. Having reviewed the same materials, I do not find any legal misapprehension or perversity in that conclusion. All ingredients of Section 138 have been proven. The appellant's defence has not been established on evidence.
- vi. **Benefit of doubt:** The appellant contends that any doubt should be resolved in his favour, referencing his acquittal in another case. It is true that if there were an unresolved doubt, the accused would be entitled to benefit. However, I find no such doubt of substance here. The evidence, when weighed, overwhelmingly supports the conclusion that the cheque was properly issued and dishonoured, and the appellant failed to rebut the presumption of liability.
- vii. **Legal precedents:** The authorities underscore that the presumption in Section 139 is not easily displaced. The Hon'ble Supreme Court in [M.S. Narayana Menon @ Mani vs State Of Kerala & Anr on 4 July 2006: AIR 2006 SC 3366](#) held that vague and unsupported allegations by the drawer will not suffice to rebut the presumption. Similarly, the recent judgments of the Hon'ble Supreme Court (Rajesh Jain (supra)) make it clear that the accused must meet his evidential burden with affirmative proof. Applying these principles, I find the appellant's plea (of a "stolen/misused" cheque) to be unsubstantiated in law.
- viii. The record shows the accused was questioned under Section 313 CrPC on the incriminating circumstances. This procedural requirement was

fulfilled. His denial in that examination is on record, but carries no weight as substantive evidence.

In view of the above, on the facts and law, the prosecution's case stands fully proved. The complaint under Section 138 of the NI Act has been established beyond a reasonable doubt.

Conclusion

I am therefore of the considered opinion that the impugned judgment of conviction cannot be interfered with on the merits. For the reasons stated, the appeal is without merit. I confirm the conviction of the appellant under Section 138 of the Negotiable Instruments Act.

Order

The appeal is dismissed. The judgment and sentence of the ACJM, Kannauj, dated 14.07.2025, are upheld. The appellant Abhinat Kumar Gupta is convicted of the offence under Section 138 NI Act, and is liable to pay a fine of Rs.38,00,000/-. In default of payment of the fine, he shall undergo 6 months' simple imprisonment as ordered below. The period of jail, if any, already undergone by the appellant in this case shall count towards the default sentence. The bail bonds of the appellant (if any) are hereby cancelled and sureties discharged.

This judgment and all the record be remitted to the trial court forthwith for compliance.

This judgment is signed, dated and pronounced in the open court on this 23rd day of September, 2025.

(Chandroday Kumar)
Sessions Judge, Kannauj
Date: 23.09.2025