UPKJ010034512025

In the Court of Sessions Judge, Kannauj

Presiding Officer - Chandroday Kumar (Higher Judicial Service) UP06553

Criminal Appeal No.- 75 /2025

Abhinat Kumar Gupta, age 36 years, 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. Jitendra Kumar, son of Patiram, resident of Mohalla Kidwai, Town and Police Station Gursahaiganj, District Kannauj.

.....Respondents.

JUDGMENT

Introduction

1. This appeal under Section 374(3) CrPC has been filed by the accused, Abhinat Kumar Gupta, challenging his conviction by the Additional Chief Judicial Magistrate (ACJM), Kannauj, in Complaint Case No. 67/2018. By judgment dated 14.07.2025, the trial court held the appellant guilty of an offence under Section 138 of the Negotiable Instruments Act, 1881 ("NI Act") and imposed a **fine of Rs. 20,00,000/-**. The appellant now seeks acquittal or reduction of sentence. The appeal raises questions about the existence of any legally enforceable debt, the issuance and dishonour of cheque No. 523544 dated 20.12.2017 for Rs. 18,00,000/-, and whether the defence of a "stolen cheque" was sufficiently proven. I proceed to examine the case on facts and law.

Facts and Background

2. The complainant, Jitendra Kumar, alleges that the appellant had availed a sum of **Rs. 18 lakh** from him, repayable on demand. To secure this liability, the appellant reportedly issued cheque No. 523544 dated 20.12.2017 drawn on his account. The cheque was presented for payment, but on 28.12.2017, the bank returned it dishonoured with the endorsement "funds insufficient." Jitendra Kumar sent a statutory demand notice dated 09.01.2018, calling upon the appellant to pay the cheque amount within 15 days. The appellant failed to make any payment, and Jitendra Kumar filed a Complaint Case No. 67/2018 under Section 138 of the NI Act. In his statement before the trial court, the appellant denied having issued the cheque, asserting instead that

the cheques had been stolen and that no debt was owed to the complainant. He claimed that the complainant had fabricated the cheque to harass him. In support of his defence, the appellant pointed to an FIR registered by him alleging fraud within a company and submitted a police report noting that his cheques were missing. The trial court, however, found in favour of the complainant, relying on the original cheque (bearing the appellant's signature), the bank memo and the notice. It convicted the appellant on 14.07.2025. The appellant was sentenced to pay a fine of Rs. 20,00,000/- under Section 138. In default of payment of the fine, four months' simple imprisonment was ordered. The present appeal followed.

Points for Determination

3. The appeal involves the following issues:

> **(i)** Whether the prosecution proved the statutory ingredients of Section 138 NI Act, namely that the cheque in question was drawn by the appellant for the discharge of a legally enforceable debt or liability, that it was presented for payment, dishonoured, and that due notice was given?
>
> **(ii)** Whether, once the complainant established these facts, the presumption under Section 139 of the NI Act arose, and if so, whether the appellant successfully rebutted this presumption by showing that the cheque was stolen or that no debt existed?
>
> **(iii)** Whether the defence of a "stolen cheque" was credible in the circumstances, particularly in light of any FIR or bank complaint, and whether the appellant discharged his evidentiary burden?
>
> **(iv)** Whether there were any procedural irregularities (such as recording of the appellant's statement under Section 313 CrPC) that affect the validity of the conviction?

These points encapsulate both the factual controversies and the relevant legal principles.

Submissions of the Parties

4. Complainant's Submissions: Learned Counsel for Jitendra Kumar argued that all ingredients of Section 138 were satisfied. The cheque bearing the appellant's name and signature was duly drawn on his account to meet the debt. The bank memo confirmed its dishonour on 28.12.2017 due to insufficient funds, and the drawer stopped the payment. The notice dated 09.01.2018 was sent within 30 days and was duly received by the appellant, who made no payment within the next 15 days. In the absence of payment, the complainant filed the complaint. Once these facts are proved, Section 139 of the NI Act creates a statutory presumption that the cheque was issued for the discharge of debt. The burden then shifts to the appellant to rebut this presumption (Pl. see Hon'ble Apex Court rulings **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**. The

defence of a "stolen cheque" is baseless, learned counsel submitted, since the appellant never informed the bank, as there is no endorsement by the bank that payment was refused due to a stolen cheque, as stated in serial number 83 of the memorandum. A photocopy of the application given to the police station was filed before the trial court, which is not admissible as evidence. No FIR or charge sheet was on record to support theft; hence, the appellant's claim is a preplanned one. The complainant's learned counsel urged that the evidence (cheque, memo, notice) be accepted as credible, and the conviction be upheld.

5. Appellant's Submissions: Learned counsel for Abhinat Kumar Gupta contended that the trial court erred in convicting him as a matter of law. He reiterated that he neither issued nor delivered the cheque to the complainant. He claimed that three signed cheques (including the cheque in question) were stolen from his house by unknown persons. He relied on information to the police and an FIR regarding fraud by the Infotech company. Since he did not issue the cheque to Jitendra, Section 138 cannot apply. Learned Counsel emphasised that a cheque can only form the basis of a claim when it is given for a lawful debt, and here, no evidence of any loan or liability was produced. The notice and dishonour memo cannot convert a non-existent debt into an offence. He also argued that Section 139's presumption is rebuttable, and the appellant has raised a probable defence (theft and lack of debt) on preponderance of probabilities. In sum, the appellant urged this Court to re-evaluate the evidence with a presumption in his favour and to set aside the conviction. 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.

Appreciation of Evidence

6. The prosecution's case rests largely on documentary evidence along with the oral testimony of PW-1 Jitendra Kumar. The complainant tendered the original cheque, the bank's return memo, and the statutory notice. The cheque bears the drawer's (accused's) account details and a signature. The defence did not lead handwriting expert evidence to dispute the signature and handwriting, nor did the appellant produce the cheque leaf itself (if available) during the trial. The bank memo and notice together satisfy the procedural requirements of Section 138 NI Act as they show the cheque was drawn on 20.12.2017, dishonoured on 28.12.2017 for insufficient funds, and that notice was sent within 30 days of dishonour. These aspects are essentially uncontroverted.

7. On the defence side, the appellant denied having issued the cheque. His statement under Section 313 CrPC is simply a denial. It appears he did not testify formally or call any defence witness except submitting a copy of the FIR for a separate offence (financial irregularities at his company) and a police report indicating missing cheques. No direct evidence was brought on record that the complainant stole or forged the cheque. The accused's statement under Section 313, though considered by the trial court, is not

itself substantive evidence; it serves only as an opportunity to explain incriminating circumstances. In effect, the complainant's documentary evidence tends to show that a cheque signed by the appellant was presented and dishonoured, while the appellant's defence is a general denial supported by circumstantial material.

8. The trial court resolved these facts in favour of the complainant, apparently accepting the complainant's account as truthful and finding the stolen cheque defence as unsubstantiated. The complainant testified in support of the complaint, and his documents are formal and admissible. The accused's reliance on the FIR against the Infocare company does not in itself disprove the execution of the cheque. On balance, the versions must be resolved in light of legal principles.

Legal Position

9. Section 138 of the NI Act stipulates that when a person draws a cheque on his account for payment of money to another, towards discharge of any debt or other liability, and it is returned unpaid for insufficiency of funds, he commits an offence. The Section specifies mandatory conditions: the cheque must be presented to the bank within six months (or validity period) of its date, and the holder must give notice of dishonour to the drawer within 30 days, with the drawer failing to pay within 15 days. The Explanation to Section 138 defines "debt or other liability" as a "legally enforceable debt". In this case, it is undisputed that the cheque was presented and dishonoured, and notice was sent. Thus, the primary questions are whether it was issued for a "legally enforceable debt" and whether the appellant has rebutted the resulting presumption.

10. Section 139 NI Act creates a statutory presumption: **"It shall be presumed, unless the contrary is proved, that the holder of a cheque … received the cheque … for the discharge, in whole or in part, of any debt or other liability."**. This means that once the prosecution proves the existence of the cheque, its presentation, dishonour, and notice, the burden shifts to the accused to prove otherwise. The Hon'ble Supreme Court in the case of Tedhi Singh (supra) has emphasised that this presumption is rebuttable only by raising a "probable defence" on a preponderance of probabilities. In ***Basalingappa vs Mudibasappa on 9 April, 2019: 2019 (5) SCC 418*** and Tedhi Singh (Supra), the Hon'ble Supreme Court summarised that once the execution of a cheque is admitted, Section 139 … mandates a presumption that the cheque was for the discharge of any debt or other liability and that the accused must then raise a probable defence on preponderance. The court may consider both the materials brought by the parties and the overall circumstances in determining whether the presumption has been rebutted.

11. Suppose the court observes that the signature on the cheque is not disputed. In that case, the presumption under Section 139 of the NI Act is that it has been issued for discharging a legally subsisting liability, placing the onus on the accused to rebut this presumption. In ***K.N. Beena vs***

Muniyappan And Another on 18 October 2001: 2001 (8) SCC 458, the Hon'ble Supreme Court affirmed that "under Sections 118, unless the contrary was proved, it is to be presumed that the Negotiable Instrument (including a cheque) had been made or drawn for consideration. Under Section 139, the Court has to presume, unless the contrary was proved, that the holder of the cheque received the cheque for the discharge, in whole or in part, of a debt or liability. Thus, in complaints under Section 138, the Court has to presume that the cheque had been issued for a debt or liability. This presumption is rebuttable. However, the burden of proving that a cheque had not been issued for a debt or liability is on the accused". Once the issuance of a cheque is proved, the accused must explain the circumstances on a preponderance of probability. In short, our law gives full credence to the cheque and signature once tendered in evidence, and requires credible evidence to displace the presumption of debt.

12. Regarding the defence of a "stolen cheque," courts have held that a drawer who complains of theft must lodge a police complaint or inform the bank in order to make this defence plausible. Mere submission of a photocopy of information to the police without a formal notice to the bank is generally insufficient. The Hon'ble Supreme Court in **Raj Kumar Khurana vs State Of (NCT Of Delhi) & Anr on 5 May, 2009: CRIMINAL APPEAL NO. 913 OF 2009,** indicated that if a cheque is reported as lost or stolen, it cannot be deemed dishonoured; but where no bank notice of loss exists, Section 138 may still apply. Thus, if a drawer claims his cheque was stolen, he must substantiate this defence by admissible evidence (e.g. FIR, letter to the bank asking for the stoppage of payment due to a stolen cheque in original). Absent such proof, the defence remains suspect.

Findings

13. Applying the foregoing law to the facts, I find as follows:

- **On Dishonour and Notice:** The evidence conclusively shows that the cheque was drawn, presented and dishonoured on 28.12.2017, and that a proper notice was sent on 09.01.2018. These ingredients of Section 138 are satisfied. The complainant's case on these points is corroborated by the bank memo and notice, and is not disputed by the appellant (who instead denies issuance entirely).

- **On Section 139 Presumption:** The complainant proved the drawer's name, cheque, dishonour, and notice. Therefore, the statutory presumption of a debt/ liability in favour of the complainant arose under Section 139. The burden shifted to the appellant to rebut it. The appellant has raised the defence that the cheque was stolen and that he owed no debt. On the current record, this defence has not been convincingly proved. The police report of stolen cheques was not shown to have been made known to the bank. Moreover, the information about the stolen cheque to the police, which was presented before the trial court, was a photostate only and is not admissible. As *Basalingappa* instructs, the appellant must only show a

"probable defence" by preponderance, but his vague claim of theft lacks specific proof (no specific date of theft, no legible stoppage request, etc.). Meanwhile, no document or witness has been produced to establish that any debt was actually repaid or waived. I therefore cannot say the appellant has met the standard to rebut Section 139's presumption. On the contrary, the presumption tends to operate against him, since the execution of the cheque (signature) is not controverted by any expert evidence.

- **On Defence of No Debt:** Relatedly, the appellant's claim that "no debt existed" is simply another facet of his probable defence. Again, the law places only an evidentiary burden on him. He has presented no ledger, agreement or witness to show that he never borrowed Rs.18 lakh. The complainant's case is that the money was deposited in Infocare; the absence of proof by the complainant about the particulars of the debt does not automatically disprove the debt, given the presumption. In fairness, the complainant could have produced more documentary evidence of the transactions, but his receipt of the cheque and notice initially sufficed.

- **On Stolen Cheque Defence:** Courts have often disbelieved stolen cheque defences when not backed by formal complaints. Here, the accused's assertion of theft only after being prosecuted weakens its credibility. If the defence of theft is not immediately communicated to the bank or police, it casts serious doubt. Without admissible evidence of an earlier complaint (not by photostate), I view the stolen cheque claim with scepticism. The complainant is free of any statutory wrongdoing by virtue of this claim; he simply presented a cheque to his banker. Legally, the onus was on the appellant to prove theft on the balance of probabilities, which he has not done. 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.

- **On 313 CrPC Compliance:** 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, as noted above, carries no weight as substantive evidence.

- 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.

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

14. 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.20,00,000/-. In default of payment of the fine, he shall undergo 4 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