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

CNR No. DLHC010381872026

+ **CRL.L.P. 37/2026**

RAM KISHORE TYAGI

.....Petitioner

Through: **Mr. Neeraj Kumar, Adv. (DHCLSC)**
versus

SH. RIZWAN KHAN @ SONU

.....Respondent

Through: **None.**

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

ORDER

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18.08.2026

CRL.M.A. 25191/2026 (delay)

1. For the reasons stated in the application, the same is allowed, and the delay of 27 days in filing the application for leave to appeal stands condoned.
2. Application stands disposed of.

CRL.L.P. 37/2026

1. This appeal seeks to challenge the impugned judgment dated 02.05.2026 passed by the Additional Sessions Judge [ASJ] in Criminal Appeal No.211/2025 whereby, the judgment of acquittal passed by the JMFC dated 14.08.2025 has been affirmed.
2. The petitioner is the complainant who had filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 [NI Act] against the accused, namely, Rizwan Khan @ Sonu. It was his case in the complaint



that the accused was a tenant in the premises of the complainant @ Rs.7,800/- per month for a period of 11 months, from January, 2020 to November, 2020, excluding electricity and water charges.

3. On 18.02.2020, the accused told the complainant about his problem that his payment was stuck in the market, so he required Rs.20,000/- and requested him to provide a friendly loan of Rs. 20,000/-. Considering the request, the complainant took Rs.20,000/- from his son Gaurav Tyagi and handed over to the accused as a friendly loan on 20.02.2020.

4. It is stated that on 20.07.2023, the accused told the complainant that he is unable to pay the rent of the premises due to the lockdown imposed owing to the COVID-19 pandemic and requested the complainant for another friendly loan of Rs.10,000/-. Considering his problem, the complainant had given a loan of Rs.10,000/- to the accused. It is submitted that the accused neither paid the monthly rent of the house nor the friendly loan taken by him from the complainant.

5. The dispute, therefore, had arisen, which according to the complainant, was settled by way of the Settlement dated 11.09.2020. The accused has issued a cheque of Rs.1,38,800/- in favour of the complainant for the discharge of the liability of loan, rent and other dues. After the filing the complaint, cognizance was taken and the parties had adduced oral and documentary evidence.

6. The JMFC after conducting the trial in terms of the ingredients of Section 138 of the NI Act, found that two essential ingredients, namely, *first*, that the cheque in question is required to be issued for the discharge, in whole or in part of any debt or liability; and *second*, the debt or other liability against which the cheque was issued is legally enforceable, were not



made out. The accused was, therefore, acquitted from the offences under Section 138 of the NI Act. The material portion of the order reads as under:

“29. Perusal of record shows that the complainant in complaint, in legal [text obscured by stamp] and in his evidence affidavit has nowhere deposed that how the liability of cheque amount arose against the accused. It is the case of the complainant that accused has defaulted the rent, denied paying the friendly [text cut off].

32. This court also fails to understand that why the complainant kept on giving the friendly loan to the accused first in February 2020 and secondly in July 2020 when accused was not paying the rent. It is found that February 2020 was the first month and July 2020 was the month when the accused rejoined the rented premises after the lock down. It is also not digestible that why the complainant paid the cheque loan to accused when the accused did not return first loan as well as the rent of previous month. The complainant did not transfer the money to the accused through the bank. It is pertinent to mention that accused has challenged the document/promissory note under the garb of rent agreement. Also, it is nowhere deposed by complainant/CW1 that loan was given in the presence of some other witness. Tenure of the loan was also not deposed by CW1 ever.

35. No call recording, no whatsapp chat, no witness, no receipts etc. are made and produced by the complainant before the court in support of its contention. It is also necessary to mention here that complainant has made document at every stage i.e. rent agreement and promissory note but not create any document at the time of settlements of both or for the settlement between them. As the time of handing over of cheque is questioned by the accused, it is nowhere deposed by the complainant that where(place) and when (date and time), the cheque in question was handed over by accused to him. Mere verbal submission of CW1 is not enough evidence in the eyes of law without supporting documents. This makes story of complainant highly improbable. Thus, evidence of the complainant does not inspire confidence due to these severe contradictions.”

7. Against the judgment of acquittal, an appeal was preferred by the petitioner which came to be dismissed by the impugned order.

8. The Appellate Court, in terms of para 13 to 18, has rendered the following findings:

“13. During course of arguments, Ld. Counsel for the appellant has submitted that respondent no-2 has pleaded contradictory defenses. In



statement of accused, respondent no-2 has submitted that cheque was handed over to the appellant at the time of vacating the rent premises as security for paying electricity charges but in cross-examination he has stated that blank signed cheque was taken by the appellant as security against the rent agreement. Further, at the time of framing of notice, respondent no-2 stated that cheque does not bear his signature and same was handed over to appellant as security without signing the same. Whereas, in statement of accused U/s 313 of Cr.P.C and cross-examination, respondent no-2 has admitted his signatures. Ld. Counsel has also argued that the evidence of the appellant cannot be visited with any doubt because it has remained un rebutted because appellant has not been subjected to the cross examination.

14. In support of his arguments, Ld. Counsel has placed reliance on the following judgments:-

(i) "Kishan Rao Vs. Shanlaugouda" 2018 AIR. {Cr/}726 SC and "Rohit Bhai Jivan Lal Patel Vs. State of Guj.& Ors" (2019):

The apex court laid down the law that in absence of cogent evidence, the presumption U/s 139 of N.I Act cannot be rebutted by mere denial regarding existence of debt and would not fulfill requirements of rebuttal as envisaged U/s 118/139 of N.I Act.

(ii) "Rajesh Jain Vs. Ajay Singh in CRL No.-12802/2022:-

The presumption U/s 118/139 N.I. Act are legal presumption and only can be rebutted by the accused by placing on record the cogent and reliable evidence. If signature on the cheque admitted by accused and the case setup by accused is thoroughly riddled with contradictions the accused failed to discharge cogent and reliable evidence. If signature on the cheque admitted by accused and the case setup by accused is thoroughly riddled with contradictions the accused failed to discharge his evidential burden; the fact will have to be taken as proved by force of presumption without requiring anything more from the complainant and hold that trial court ought to have concerned itself with the case setup by the accused: whether he had discharged his evidential burden by proving that there existed debt or liability at the time of issuance of the cheque, if no answer is in negative the court should go with legal presumption provided U/s 118 (a)/139 N.I. Act and 114 Cr.P.C Act (Para No.23, 47, 52, 55, 56, 60,61,62.

15. On the other hand, Ld. Counsel for respondent no-2 has submitted that the respondent no-2 never owed any liability to the tune of cheque amount towards the appellant. He had issued the cheque as blank signed as security at the time of vacating the premises and same was misused by the appellant by unilaterally filling an exorbitant amount.

16. Arguments have been heard. Record has been perused.



17. The case projected by the appellant before the Ld. Trial Court was that he had granted tenancy to respondent no-2 Rizwan Khan in the month of January 2020 to November 2020, for a period of 11 months on an agreed rent of Rs. 7,800/- per month. The respondent no-2 told the appellant that he could not make the payment and his financial condition was also not good. So, on 18.02.2020, the respondent no-2 demanded financial help of Rs. 20,000/- from the appellant and appellant provided the same. On 28.07.2020, the respondent no-2 again told the appellant that he was not in a position to pay the rent due to lock-down and further made a request for a friendly loan of Rs. 10,000/-. The appellant again agreed for, the same and provided the loan to respondent the loan to respondent no-2. On 10.09.2020, respondent no-2 told the appellant that his business was in a very bad condition due to lock-down and he wanted to vacate the premises. The appellant told the respondent no-2 that he has to pay the rent and the amount of friendly loan of Rs. 30,000/-.

18. On 11.09.2020, a settlement was arrived at between the appellant and respondent no-2. In pursuant to the said settlement, the respondent no-2 allegedly issued a cheque of Rs. 1.38,000/- in discharge of his liabilities. The signatures on the impugned cheque have been admitted by the respondent no-2. It's dishonour has been proved by the return memo Ex.CWI/D. The legal demand notice Ex.CWI/F was sent to respondent no-2 and the postal receipts Ex.CWI/G to Ex.CW1I/J have been proved on record. The correctness of the address mentioned in the legal demand notice has not been disputed by the respondent. Thus, the issuance of cheque, its dishonour and service of legal demand notice do not appear to be in dispute. The above ingredients of offence U/s 138 of N.I Act are thus proved.”

9. In **H.D. Sundara v. State of Karnataka**,¹ the Supreme Court discussed the scope of an appeal against an acquittal order, the material portion of the said decision reads as under:

“8. In this appeal, we are called upon to consider the legality and validity of the impugned judgment [State of Karnataka v. H.K. Mariyappa, 2010 SCC OnLine Kar 5591] rendered by the High Court while deciding an appeal against acquittal under Section 378 of the Code of Criminal Procedure, 1973 (for short “CrPC”). The principles which govern the exercise of appellate jurisdiction while dealing with an appeal against acquittal under Section 378CrPC can be summarised as follows:

¹ (2023) 9 SCC 581.



8.1. The acquittal of the accused further strengthens the presumption of innocence;

8.2. The appellate court, while hearing an appeal against acquittal, is entitled to reappreciate the oral and documentary evidence;

8.3. The appellate court, while deciding an appeal against acquittal, after reappreciating the evidence, is required to consider whether the view taken by the trial court is a possible view which could have been taken on the basis of the evidence on record;

8.4. If the view taken is a possible view, the appellate court cannot overturn the order of acquittal on the ground that another view was also possible; and

8.5. The appellate court can interfere with the order of acquittal only if it comes to a finding that the only conclusion which can be recorded on the basis of the evidence on record was that the guilt of the accused was proved beyond a reasonable doubt and no other conclusion was possible.”

(Emphasis supplied)

10. In **Jafarudheen v. State of Kerala**,² the Supreme Court further held as under:

“25. While dealing with an appeal against acquittal by invoking Section 378CrPC, the appellate court has to consider whether the trial court's view can be termed as a possible one, particularly when evidence on record has been analysed. The reason is that an order of acquittal adds up to the presumption of innocence in favour of the accused. Thus, the appellate court has to be relatively slow in reversing the order of the trial court rendering acquittal. Therefore, the presumption in favour of the accused does not get weakened but only strengthened. Such a double presumption that enures in favour of the accused has to be disturbed only by thorough scrutiny on the accepted legal parameters.”

11. Bearing in mind the aforesaid categorical finding, the Court does not deem it appropriate to interfere with the impugned order.

12. In view of the aforesaid, the petition fails and is hereby dismissed.

PURUSHAINDR KUMAR KAURAV, J

AUGUST 18, 2026/P

² (2022) 8 SCC 440.