



IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

238

DATE OF DECISION:13.05.2025

CRM-A-901-2023 (O&M)

ANIL

.....APPLICANT/APELLANT

**Versus**

NARESH KUMAR

.....RESPONDENT

CRM-A-728-2023 (O&M)

ANIL

.....APPLICANT/APELLANT

**Versus**

NARESH KUMAR

.....RESPONDENT

**CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL**

Present: Mr. P.S. Sekhon, Advocate  
for the applicant/appellant.

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**SANDEEP MOUDGIL, J**

**CRM-28078-2023 in CRM-A-901-2023**

This application has been filed under Section 5 of the Limitation Act for condonation of delay of 108 days in filing the appeal.

For the reasons mentioned in the application and in view of the submission made by learned counsel for the applicant, the application is



allowed and delay of 108 days in filing the appeal is condoned.

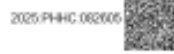
**CRM-23000-2023 in CRM-A-728-2023**

This application has been filed under Section 5 of the Limitation Act for condonation of delay of 33 days in filing the appeal.

For the reasons mentioned in the application and in view of the submission made by learned counsel for the applicant, the application is allowed and delay of 33 days in filing the appeal is condoned.

**Main cases**

1. Vide this common order, this Court intends to dispose of above mentioned two appeals as common questions of fact and law are involved therein.
2. For the sake of convenience, the facts are being taken from CRM-A-901-2023.
3. Factual matrix of the present case unfolds that the appellant, Anil, alleges that the respondent, Naresh, approached him for a friendly loan of Rs. 15 lakhs in December 2015, which was repayable on demand. To discharge his liability, the respondent issued two cheques bearing No. 688191 and 688192 both dated 01.07.2017 from his account No. 1219000100567774 totaling Rs. 15 lakhs (Rs. 8 lakhs and Rs. 7 lakhs). However, when presented on 01.09.2017 both cheques were dishonored due to insufficient funds. Despite a legal notice dated September 13, 2017, the respondent failed to pay, prompting the complainant to file two separate complaints
4. Learned counsel for the appellant submits that the learned Judicial Magistrate Ist Class, Rohtak has committed a grave error in law and on facts by misappreciating the evidence adduced by the complainant-appellant



wherein the respondent-accused failed to honour the cheque given by him for a sum of Rs. 15 lakhs (Rs. 8 lakhs and Rs. 7 lakhs).

5. He further submits that the Learned Trial Court further erred in holding that the issuance of cheque was itself admitted by the respondent-accused during the cross examination, therefore, it seems that the learned trial Court has based its observations upon hyper technical grounds.

6. In addition, he submits that since the issuance of the cheque by the accused-respondent stands admitted and proved, the legal presumption under Section 139, which mandates that the cheque was issued in discharge of a debt or liability, stands un rebutted. Therefore, the findings of the learned Trial Court are perverse and liable to be set aside.

7. Heard.

8. Having heard the counsel for the appellant and going through the case file, this court is of the considered opinion that there is no illegality or infirmity in the judgment passed by the trial court.

9. This court noted that the appellant neither mentioned the specific date of the alleged loan in the complaint or affidavit nor provided clarity during cross-examination. The claimed friendly relationship between the appellant and respondent lacked credibility due to inconsistencies and the complainant's inability to answer basic personal details about the respondent. It appeared highly improbable that a sum of Rs. 15 lakhs would be given as a cash loan without any written documentation or acknowledgement. The appellant/complainant also failed to establish financial capacity to advance such a loan, having worked on a contractual basis and with no bank withdrawal or sale deed presented to support the alleged source of funds. The involvement



of cousin brothers Sunil and Dinesh was alleged but neither was examined, raising further doubts. Given these contradictions and the lack of convincing evidence, the accused successfully rebutted the presumption under Section 138 of the Negotiable Instruments Act. The appealant failed to prove a legally enforceable debt, and mere possession of the cheque does not establish liability. Therefore, respondent Naresh Kumar has rightly been acquitted of the charges.

10. Moreover, presumptions under section 138 and 139 of the NI Act are rebuttable presumptions and same are rebuttable on preponderance of probabilities. It is a settled principle of law that once the defence is able to rebut the presumption under the NI Act, it is for the complainant to prove the case beyond all reasonable doubts and the same has been supported by the Apex Court in '*M/s Kumar Exports vs M/s Sharma Carpets Crl Appeal No. 2045 of 2008.*'

11. In the light of above discussion, this court is of the strong view that no fault can be found with the judgment dated 18.01.2023 passed by the trial court and as such the present application under section 378(4) Cr.P.C stands declined as well the appeal, having no merit stands dismissed.

12. Ordered accordingly.

13. A photocopy of this order be placed on the file(s) of connected case(s).

(SANDEEP MOUDGIL)  
JUDGE

13.05.2025  
*anuradha (a)*

<i>Whether speaking/reasoned</i>	:	<i>Yes/No</i>
<i>Whether reportable</i>	:	<i>Yes/No</i>