<u>IN THE COURT OF SH. LOVLEEN, ADDITIONAL SESSIONS JUDGE-03, SAKET COURTS, NEW DELHI</u>

DLSE010105082025

CRL. APPEAL No. 429/2025

**PERFECT SYNERGY ADVISORY
SERVICES PVT LTD.
THROUGH ITS DIRECTOR
PRADIP KUMAR MUDULI
HAVING OFFICE AT 203, KUSAL BAZAR
32, NEHRU PLACE, NEW DELHI-19**

….Appellant

versus

1. **FLAT EARTH OIL AND GAS Pvt Ltd.
Through its Director
Hanuman Mal Tatar
Regd. Office 72, Market Chamber-IV,
220, Nariman Pointm Mumbai-21.**

2. **HANUMAN MAL TATAR
Director, Flat Earth Oil and Gas Pvlt Ltd.
r/o 221, Market Tower-B, Cuffee Pqarade,
Mumbai- 4000020.**

3. **VIJAY KUMAR MALOO,
Director, Flat Earth Oil and Gas Pvlt Ltd.
r/o 221, Market Tower-B, Cuffee Pqarade,
Mumbai- 4000020.**

4. **ASHOK KUMAR**

Director, Flat Earth Oil and Gas Pvlt Ltd.
r/o Vishnu Maha, D Road, Marine Drive
Mumbai.

...Respondents

Date of institution	**:**	**22.09.2025**
Date of Reserving judgment	**:**	**04.10.2025.**
Date of Pronouncement	**:**	**09.10.2025.**

JUDGMENT

1. This is an appeal under section 378 CrPC preferred by the appellant against the impugned judgment dated 21.11.2016 passed by Court of Ld. Metropolitan Magistrate-07, South East District in **CC No. 623601/2016** titled Perfect Synergy Advisory Services Pvt Ltd vs Flat Earth Oil and Gas Pvt Ltd , whereby the complaint filed by the appellant u/s 138 Negotiable Instruments Act against the respondents herein was dismissed and the respondents were ordered to be acquitted. For the sake of convenience, the appellant herein shall be referred to as '<u>complainant</u>' and the respondents herein shall be referred to as '<u>accused</u>'.

BRIEF FACTS

2. The facts of the case put forth by the complainant against the accused have been correctly noted by the Ld. Magistrate in his impugned judgment. The relevant paragraphs are reproduced hereinafter for ready reference:-

"…………………………………………………………………………..

…………………………………………………………………………..

2. It is case of the complainant that accused entered into a loan agreement dated 18.08.2007 with the complainant for short term financial assistance. As per terms and conditions the accused pledged the shares and executed an irrevocable power of attorney in respect of pledged shares favour of the complainant. Accordingly Rs. 10 crores were advanced by the complainant on an agreed interest of 2% per month. However accused defaulted and later a mutual settlement was entered into between the parties pursuant to which accused issued a cheque of Rs.5 crores towards part payment. The complainant presented the cheque for encashment to its banker and the same got dishonoured with the remarks '*Payment stopped by drawer*'. Thereafter the complainant served a legal notice upon the accused. However, the accused failed to take steps to liquidate the liability. Consequently, present complaint was filed by the complainant on the factual matrix of the case ………………………………………………………...
…………………………………………………………………...”

<u>TRIAL</u>

3. Vide order dated 28.09.2010, the Ld. Magistrate concerned summoned the accused to face trial u/s 138 NI Act. On 05.12.2015, a notice u/s 251 Cr.P.C. was framed upon the accused wherein all the accused admitted the issuance of cheque in question in favour of complainant. However, all of them claimed in defence that the same was issued towards buy back of the shares belonging to Flat Ocean Resources Pvt. Ltd, Flat Ocean PTE Ltd. and Ensearch Petroleum Ltd. But when the complainant declined the offer of accused, instructions were issued to the bank for stopping the payment of cheque. All accused denied the receipt of Legal

Demand Notice.

4. During trial, the complainant examined its AR Sh. Pradip Kumar Muduli as CW-1 in support of its allegations against the accused in this case. Statements of accused were recorded u/s 313 Cr.P.C. In defence evidence, the accused Hanuman Mal Tater examined himself as DW1. One Kanhaiya Lal Bothra was also examined as DW2. Upon the conclusion of trial, accused was convicted of the offence punishable u/s 138 NI Act vide the impugned judgment dated 21.11.2016.

GROUNDS OF APPEAL

5. The grounds cited by the accused against the impugned judgement are as under :

A. Because the impugned judgement passed Ld. MM is contrary on law and evidences on records.

B. Because the Ld. Trial Court was not right in acquitting the Respondents of the offence committed by the Respondents for dishonour of cheques in question.

C. Because the Ld. Trial Court has erred on coming to the finding that the respondents did not owe any liability under the loan transactions with the appellant and the cheques in question were issued as advance to buy back the shares, which did not materialise, so it could not be taken in as discharge of any liability. It is submitted that the Ld. Trial Court was not right in coming to the conclusion in the absence of any such evidence during the trial.

D. Because the Ld. Trial Court failed to note the fact that the Respondents gave a statement on 02.09.2013 and an undertaking to pay settled amount by March 2015. Especially, after paying part amount, the respondents defaulted in making the payment as per statement again and started delay tactics, hence the trial commenced. Therefore, the acquittal of the accused persons by Ld. Trial Court on the premise that the respondent owed no liability is perverse and unsustainable in law.

E. Because the Ld. Trial Court failed to appreciate that the respondent had not produced any evidence in support of their contention that the cheques which were issued by the respondents were towards buy back shares. On the the contrary, the same were issued in pursuance to legally enforceable debt recoverable by respondents. It is submitted the cheques dated 30.07.2010 were issued against the two earlier cheques of dated 15.07.2010 and 30.07.2010 out of which one cheque dated 15.07.2010 was dishonoured. However, as per the request letter 22.07.2010 of Respondents, the same were returned and replaced by two cheques dated 30.07.2010 which was only for the loan repayment not as buy back shares. However, the cheques again were dishonoured and consequently the complaint was filed.

F. Because the Ld. Trial Court failed to appreciate the fact that loan amount, which was advance to the respondents was in lieu of the loan agreement entered by them with the appellant vide 18.08.2007 which was further a further period of three years on the request of the respondents.

G. Because the Ld. Trial Court failed to appreciate the shares which was pledged in favour of the appellant was on the basis of Irrevocable Power of Attorney and the appellant on the basis of

Indenture of Pledge for Term Finance is entitled to recover the deficit in case the proceeds of the sale or disposal of the said securities are not sufficient to pay/repay dues of the lender.

H. Because the Ld. Trial Court failed to consider that during the pendency of the complaint case the respondents agreed to get the matter settled and had entered in to settlement by recording their statement before the Ld. Trial court on 02.09.2013 and as per the statement had also paid the amount of Rs.1.50 Crores. The respondents also issued three more cheques of Rs.50 Lacs each Dt.30.06.2014 which where dishonoured due to stop payment. However, due to the default in making further instalments and there was no intention to pay the balance amount as per the undertaking before Ld. Trial Court the trial was commenced. It is submitted that at the time of the settlement not a single averment with regard to the buyback share made by the respondents. Hence the Ld. Trial Court failed to appreciate that if the cheque was issued for buy back then why the settlement had been initiated by the respondents before the Ld. Trial Court. Hence, the impugned judgment is perverse and not sustainable in the eye of law.

I. Because the Ld. Trial court failed to appreciate that even in the cross examination of the respondents, they failed to answer that when and where or with whom the buy back shares meeting was held and how the same been initiated. Further respondents failed to show any letter or correspondence which could show that cheques in question was only for the buy back shares not with regard to the loan taken by them.

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J. Because the Ld. Trial Court further misquoted the statement of the appellant witness CW 1 in its judgment and wrongly interpreted the same. It is submitted the same could have been quoted fully or to be read out in free spirit as it was, which shows to the contrary what was interpreted by the Ld. Trial Court.

K. Because the Ld. Trial Court further failed to consider that during the time of framing of issues the respondents had stated that there was settlement but the same was also not been considered and that relevant point of time not a single averment made with regard to the buy back shares hence it is clear that the same has been improvised and only intention to mislead the court.

L. Because the Ld. Trial Court had gravely erred in coming to the conclusion that the cheque in question become otise as tere was liability to pay. It is respectfully submitted that at the time of the cheque in question was handed over by the respondent it was for settling the entire loan as it stood on the date of issuance of cheque. It is worthwhile to state that at this point of time handing over the shares/alleged buy back shares was never been issue and till date the cheques in question is nothing to do with the shares it was only for the purpose of the repayment of loan. However, the Ld. Trial Court irretrievably was confused with respect of the cheques been alive as on the date of being presented.

M. Further more the Ld. Trial Court also erred in coming to the conclusion that as the letter dated 22.07.2010 was not produced, hence an advance interference was drawn and therefore it badly damages the case of the complainant. It is respectfully submitted firstly that the letter dated 22.07.2010 was a letter given by the respondent for replacing the earlier cheques given with the cheque in

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question. Secondly under the said letter there is no such settlement arrived as is contended by the respondents. Drawing such conclusion without the said letter being on record. The impugned judgment is perverse.

N. The Ld. Trial Court gravely erred in coming to the conclusion the cheque in question has not been issued for repayment of loan. It is respectfully submitted that Ld. Trial Court had failed to notice there was no evidence on record whereby the appellant had agreed for the buy back shares and that the cheque in question was issued as advance for buy back shares and that the negotiation did not materialise so the the cheque was without consideration and could not have been taken discharge of any legal liability.

O. is submitted that there was not a single evidence on record that there was such negotiations/transfer/buy back shares whereby it was shown that the cheques Issued was so called for the advance. Infact the same was issued on 30.07.2010 was to repay the loan amount and nothing else.

P. Because the Ld. Trial Court has grossly erred to make any adverse inference against the appellant for not providing letter 22.07.2010 and coming to the conclusion that has not place on record though it defeat the claim of the appellant. Such a finding of the Ld.Trail Court perverse and unsubstantive. Further, letter date 22.07.2010 is unequivocal and unconditional undertaking to repay the loan amount by replacing the earlier. The stand of the respondents has been consistent to repay the loan amount by those cheques.

Q. For that such other and further ground shall be raised at the time of arguments and with the kind permission of this Hon'ble Court.

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6. It is prayed that the impugned judgment dated 21.11.2016 may be set aside and the accused may be convicted and sentenced for committing an offence punishable u/s 138 NI Act.

SUBMISSIONS OF ACCUSED

7. On the other hand, Ld. Counsel for the accused has argued that the accused have been correctly acquitted by the Ld. Magistrate. He prays for dismissal of the appeal filed by the complainant.

DISCUSSION

8. This Court has considered the oral submissions as well as the records.

9. Recently, the Hon'ble Supreme Court was pleased to define the contours of the law relating to the provision u/s 138 of Negotiable Instruments Act in ***Rajesh Jain Vs. Ajay Singh 2023 INSC 888***. The relevant extracts of the observations are reproduced below for ready reference:-

> ***Section 138 of the NI Act - Necessary Ingredients***
>
> *25. Essentially, in all trials concerning dishonour of cheque, the courts are called upon to consider is whether the ingredients of the offence enumerated in Section 138 of the Act have been met and if so, whether the accused was able to rebut the statutory presumption contemplated by Section 139 of the Act.*

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26. In ***Gimpex Private Limited vs. Manoj Goel (2022) 11 SCC 705*** *, this Court has unpacked the ingredients forming the basis of the offence under Section 138 of the NI Act in the following structure:*

> *(1) The drawing of a cheque by person on do account maintained by him with the banker for the payment of any amount of money to another from that account;*
>
> *(i) The cheque being drawn for the discharge in whole or in part of any debt or other liability;*
>
> *(iii) Presentation of the cheque to the bank arranged to be paid from that account,*
>
> *(iv) The return of the cheque by the drawee bank as unpaid either because the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount*
>
> *(v) A notice by the payee or the holder in due course making a demand for the payment of the amount to the drawer of the cheque within 30 days of the receipt of information from the bank in regard to the return of the cheque; and*
>
> *(vi) The drawer of the cheque failing to make payment of the amount of money to the payee or the holder in due course within 15 days of the receipt of the notice.*

27. In ***K. Bhaskaran v. Sankaran Vaidhyan Balan (1999) 7 SCC 510*** *this Court had summarised the constituent*

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elements of the offence in fairly similar terms by holding:

> *"14. The offence Under Section 138 of the Act can be completed only with the concatenation of a number of acts.The following are the acts which are components of the said offence: (1) drawing of the cheque, (2) presentation of the cheque to the bank, (3) returning the cheque unpaid by the drawee bank, (4) giving notice in writing to the drawer of the cheque demanding payment of the cheque amount, (3) failure of the drawer to make payment within 15 days of the receipt of the notice."*

28. The five (5) acts as set out in ***K Bhaskaran's case (supra)*** *are, generally speaking, matters of record and would be available in the form of documentary evidence as early as, at the stage of filing the complaint and initiating prosecution. Apart from the above acts, it is also to be proved that cheque was issued in discharge of a debt or liability (Ingredient no. (ii) in Gimpex's case). The burden of proving this fact, like the other facts, would have ordinarily fallen upon the complainant. However, through the introduction of a presumptive device in Section 139 of the NI Act, the Parliament has sought to overcome the general norm as stated in Section 102 of the Evidence Act and has, thereby fixed the onus of proving the same on the accused. Section 139, in that sense, is an example of a reverse onus clause and requires the accused to prove the non-existence of the presumed fact, i.e., that cheque was not issued in discharge of a debt/liability.*

Burden of Proof and Presumptions: Conceptual

Underpinnings

29. There are two senses in which the phrase 'burden of proof' is used in the Indian Evidence Act, 1872 (Evidence Act, hereinafter). One is the burden of proof arising as a matter of pleading and the other is the one which deals with the question as to who has first to prove a particular fact. The former is called the 'legal burden' and it never shifts, the latter is called the 'evidential burden' and it shifts from one side to the other. [See ***Kundanlal v. Custodian Evacuee Property (AIR 1961 SC 1316)]***

30. The legal burden is the burden of proof which remains constant throughout a trial. It is the burden of establishing the facts and contentions which will support a party's case. If, at the conclusion of the trial a party has failed to establish these to the appropriate standards, he would lose to stand. The incidence of the burden is usually clear from the pleadings and usually, it is incumbent on the plaintiff or complainant to prove what he pleaded or contends. On the other hand, the evidential burden may shift from one party to another as the trial progresses according to the balance of evidence given at any particular stage; the burden rests upon the party who would fail if no evidence at all, or no further evidence, as the case may be is adduced by either side (See Halsbury's Laws of England, 4th Edition para 13). While the former, the legal burden arising on the pleadings is mentioned in Section 101 of the

Evidence Act, the latter, the evidential burden, is referred to in Section 102 thereof. ***[G.Vasu V. Syed Yaseen (AIR 1987 AP139)*** *affirmed in* ***Bharat Barrel Vs. Amin Chand [(1999) 3 SCC 35]]***

31. Presumption, on the other hand, literally means "taking as true without examination or proof". In ***Kumar Exports v. Sharma*** *Exports (2009) 2 SCC 513, this Court referred to presumption as "devices by use of which courts are enabled and entitled to pronounce on an issue notwithstanding that there is no evidence or insufficient evidence."*

32. Broadly speaking, presumptions are of two kinds, presumptions of fact and of law. Presumptions of fact are inferences logically drawn from one fact as to the existence of other facts. Presumptions of fact are rebuttable by evidence to the contrary. Presumptions of law may be either irrebuttable (conclusive presumptions), so that no evidence to the contrary may be given or rebuttable. A rebuttable presumption of law is a legal rule to be applied by the Court in the absence of conflicting evidence (Halsbury, 4th Edition paras 111, 112]. Among the class of rebuttable presumptions, a further distinction can be made between discretionary presumptions ('may presume') and compulsive or compulsory presumptions ('shall presume'). *[**G. Vasu V. Syed Yaseen** (Supra)]*

33. The Evidence Act provides for presumptions, which fit within one of three forms: 'may presume' (rebuttable

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*presumptions of fact), 'shall presume' (rebuttable presumption of law) and conclusive presumptions (irrebuttable presumption of law). The distinction between 'may presume' and 'shall presume' clauses is that, as regards the former, the Court has an option to raise the presumption or not, but in the latter case, the Court must necessarily raise the presumption. If in a case the Court has an option to raise the presumption and raises the presumption, the distinction between the two categories of presumptions ceases and the fact is presumed, unless and until it is disproved, [**G.Vasu V. Syed Yaseen** (Supra)]*

<u>Section 139 NI Act-Effect of Presumption and Shifting of Onus of Proof</u>

34. The NI Act provides for two presumptions: Section 118 and Section 139. Section 118 of the Act inter alia directs that it shall be presumed, until the contrary is proved, that every negotiable instrument was made or drawn for consideration. Section 139 of the Act stipulates that 'unless the contrary is proved, it shall be presumed, that the holder of the cheque received the cheque, for the discharge of, whole or part of any debt or liability'. It will be seen that the 'presumed fact' directly relates to one of the crucial ingredients necessary to sustain a conviction under Section 138.

35. <u>Section 139 of the NI Act, which takes the form of a 'shall presume' clause is illustrative of a presumption of law. Because Section 139 requires that the Court 'shall</u>

presume' the fact stated therein, it is obligatory on the Court to raise this presumption in every case where the factual basis for the raising of the presumption had been established. But this does not preclude the person against whom the presumption is drawn from rebutting it and proving the contrary as is clear from the use of the phrase 'unless the contrary is proved'.

*36. The Court will necessarily presume that the cheque had been issued towards discharge of a legally enforceable debt/liability in two circumstances. Firstly, when the drawer of the cheque admits issuance/execution of the cheque and secondly, in the event where the complainant proves that cheque was issued/executed in his favour by the drawer. The circumstances set out above form the fact(s) which bring about the activation of the presumptive clause. [**Bharat Barrel Vs. Amin Chand] [(1999) 3 SCC 35]***

*37. Recently, this Court has gone to the extent of holding that presumption takes effect even in a situation where the accused contends that 'a blank cheque leaf was voluntarily signed and handed over by him to the complainant. [**Bir Singh v. Mukesh Kumar (2019) 4 SCC 197**]. Therefore, mere admission of the drawer's signature, without admitting the execution of the entire contents in the cheque, is now sufficient to trigger the presumption.*

38. As soon as the complainant discharges the burden to prove that the instrument, say a cheque, was issued by the accused for discharge of debt, the presumptive device under

Section 139 of the Act helps shifting the burden on the accused. The effect of the presumption, in that sense, is to transfer the evidential burden on the accused of proving that the cheque was not received by the Bank towards the discharge of any liability. Until this evidential burden is discharged by the accused, the presumed fact will have to be taken to be true, without expecting the complainant to do anything further.

39. ***John Henry Wigmore[12] on Evidence*** *states as follows:*

"The peculiar effect of the presumption of law is merely to invoke a rule of law compelling the Jury to reach the conclusion in the absence of evidence to the contrary from the opponent but if the opponent does offer evidence to the contrary (sufficient to satisfy the Judge's requirement of some evidence), the presumption 'disappears as a rule of law and the case is in the Jury's hands free from any rule."

40. The standard of proof to discharge this evidential burden is not as heavy as that usually seen in situations where the prosecution is required to prove the guilt of an accused. The accused is not expected to prove the non-existence of the presumed fact beyond reasonable doubt. The accused must meet the standard of 'preponderance of probabilities', similar to a defendant in a civil proceeding. ***[Rangappa vs. Mohan (AIR 2010 SC 1898)]***

41. In order to rebut the presumption and prove to the contrary, it is open to the accused to raise a probable defence wherein the existence of a legally enforceable debt

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or liability can be contested. The words 'until the contrary is proved' occurring in Section 139 do not mean that accused must necessarily prove the negative that the instrument is not issued in discharge of any debt/liability but the accused has the option to ask the Court to consider the non-existence of debt/liability so probable that a prudent man ought, under the circumstances of the case, to act upon the supposition that debt/liability did not exist. ***[Basalingappa Vs. Mudibasappa (AIR 2019 SC 1983) See also Kumar Exports Vs. Sharma Carpets (2009) 2 SCC 513]25***

42. In other words, the accused is left with two options. The first option-of proving that the debt/liability does not exist-is to lead defence evidence and conclusively establish with certainty that the cheque was not issued in discharge of a debt/liability. The second option is to prove the non-existence of debt/liability by a preponderance of probabilities by referring to the particular circumstances of the case. The preponderance of probability in favour of the accused's case may be even fifty one to forty nine and arising out of the entire circumstances of the case, which includes: the complainant's version in the original complaint, the case in the legal/demand notice, complainant's case at the trial, as also the plea of the accused in the reply notice, his 313 statement or at the trial as to the circumstances under which the promissory note/cheque was executed. All of them can raise a

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preponderance of probabilities justifying a finding that there was 'no debt/liability'. ***[Kumar Exports and Sharma Carpets, (2009) 2 SCC 513]***

43. The nature of evidence required to shift the evidential burden need not necessarily be direct evidence i.e., oral or documentary evidence or admissions made by the opposite party; it may comprise circumstantial evidence or presumption of law or fact.

44. The accused may adduce direct evidence to prove that the instrument was not issued in discharge of a debt/liability and, if he adduces acceptable evidence, the burden again shifts to the complainant. At the same time, the accused may also rely upon circumstantial evidence and, if the circumstances so relied upon are compelling the burden may likewise shift to the complainant. It is open for him to also rely upon presumptions of fact, for instance those mentioned in Section 114 and other sections of the Evidence Act. The burden of proof may shift by presumptions of law or fact. In Kundanlal's case- (supra) when the creditor had failed to produce his account books, this Court raised a presumption of fact under Section 114, that the evidence, if produced would have shown the non-existence of consideration. Though, in that case, this Court was dealing with the presumptive clause in Section 118 NI Act, since the nature of the presumptive clauses in Section 118 and 139 is the same, the analogy can be extended and applied in the context of Section 139 as well.

*45. Therefore, in fine, it can be said that once the accused adduces evidence to the satisfaction of the Court that on a preponderance of probabilities there exists no debt/liability in the manner pleaded in the complaint or the demand notice or the affidavit-evidence, the burden shifts to the complainant and the presumption 'disappears' and does not haunt the accused any longer. The onus having now shifted to the complainant, he will be obliged to prove the existence of a debt/liability as a matter of fact and his failure to prove would result in dismissal of his complaint case. Thereafter, the presumption under Section 139 does not again come to the complainant's rescue. Once both parties have adduced evidence, the Court has to consider the same and the burden of proof loses all its importance. [**Basalingappa vs. Mudibasappa, AIR 2019 SC 1983; See also, Rangappa vs. Sri Mohan (2010) 11 SCC 441].***

EXISTENCE OF STATUTORY PRESUMPTIONS

10. Trial court record reflects that at the time of framing of notice u/s 251 Cr.P.C, all the accused admitted that the cheque in question belongs to accused Flat Earth Oil and Gas Pvt. Ltd. The accused also admit the handing over of the cheque in question to the complainant albeit for a different purpose than what is claimed by the complainant. Admittedly, the cheque in question was dishonored upon being presented for encashment by the complainant. All the above facts are sufficient to invoke the presumptions available to the complainant u/s 118 NI Act and u/s 139 NI Act. As such, the evidential burden stood transferred upon the accused to prove that the cheque in question was not issued towards discharge of any liability. Until the said evidential burden is discharged by the accused, the presumptions available against the accused u/s 118 NI Act and u/s 139 NI Act will have to be assumed to be true, without expecting the complainant to do anything further. The said burden could be discharged by the accused either by leading defence evidence to conclusively establish that the cheque was not issued in discharge of a debt / liability or by proving the non existence of debt / liability on preponderance of probabilities by referring to the particular circumstances of the case. The nature of evidence required to shift the evidential burden need not necessarily be direct evidence. Once the accused produces such evidence, the burden shifts back to the complainant and the above mentioned presumptions disappear.

REBUTTAL OF STATUTORY PRESUMPTIONS

11. Now, the question left to be decided is whether the said presumptions have been successfully rebutted by the accused or not. In order to adjudicate the same, this Court must deal with the facts adduced on record by the accused during the cross-examination of complainant or during the defence evidence.

12. The said adjudication requires an understanding of the respective stands taken by the parties.

13. As per complainant, the cheque in question was handed over by the accused in order to repay the loan of Rs.10 Crores (as well as the accrued interest) previously availed from the complainant in terms of a Loan Agreement dated 18.08.2007. Complainant examined its AR as a witness during the course of trial.

14. On the other hand, all the accused have denied any such liability and have claimed , in response to notice framed upon them u/s 251 Cr.P.C, that they do not owe any liability to pay in respect of the cheque in question, reason being the fact that the cheque was issued towards the buy back of the shares of Flat Ocean Resources P. Ltd, Flat Ocean PTE. Ltd and Ensearch Petroleum PTE Ltd. but as the same was not done by the complainant, directions were given to the bank to stop payment of the cheque**.** In their statements recorded u/s 313 Cr.PC, the accused have reiterated their said defence. In defence evidence, accused Hanuman Mal Tater examined himself as DW1. One Kanhaiya Lal Bothra was also examined as DW2.

15. Now we delve into the oral testimony of AR of complainant, who examined himself as CW-1. CW-1 deposed in line with the facts mentioned in the afore-going paragraphs. He was duly cross-examined on behalf of the accused. During the course of cross examination, it has indeed come on record that the book value of the pledged shares was higher than the Loan Amount and that the said shares had been transferred in the name of complainant before 31.12.2007 as per the Loan Agreement dated 18.08.2007 (please see the cross-examination of CW1 on 30.03.2016 and 13.07.2016).

16. Here, it would be appropriate to observe that it is an admitted case of the parties that Perfect Softech Pvt. Ltd. has advanced a Short Term Loan to Flat Earth Oil & Gas Pvt. Ltd. vide Loan Agreement dated 18.08.2007.

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The said loan was repayable within 02 months and was duly secured through a pledge of certain ‘shares’ belonging to Flat Ocean Resources Pvt. Ltd., with a condition that the pledged ‘shares’ could be sold or transferred by Perfect Softech Pvt. Ltd. in case of default in repayment of loan. Admittedly, the loan amount was never repaid by Flat Earth Oil & Gas Pvt. Ltd. Admittedly, Perfect Softech Pvt. Ltd. has transferred the pledged shares (belonging to Flat Earth Oil & Gas Pvt. Ltd.) to itself before 31.12.2007. Admittedly, the book value of said shares was higher than the loan amount. As such, this Court could safely assume that no liability was outstanding against Flat Earth Oil & Gas Pvt. Ltd. as on 31.12.2007 at least to the extent of loan/ principal amount of Rs. 10 Crores. Given the rates of interest fixed in the Loan Agreement dated 18.08.2007 and the lapse of approximately 04 months during which period the loan liability remained unpaid, it is difficult to hold that the accused incurred interest liability to the extent of Rs. 10 Crores over and above the principal amount. If that were so, there was no occasion for the issuance of fresh 02 cheques for a sum of Rs. 20 Crores in favour of complainant. This inference deals a deadly blow to the root of the complainant’s case.

17. Although, it is claimed by the complainant that it was holding the pledged shares as a trustee, however, this Court must note that the Loan Agreement dated 18.08.2007 does not bear any reference/recitals to the effect that Perfect Softech Pvt. Ltd. could transfer the pledged shares to itself and then it could also continue to retain the same as a ‘trustee’ till the repayment of loan by Flat Earth Oil & Gas Pvt. Ltd. In fact, this assertion of revisionist, to the effect that it transferred the pledged shares in its favour in terms of Loan Agreement dated 18.08.2007 and continues to retain the same as a trustee, seems completely illogical. Reason being the fact that till the point when Perfect Softech Pvt. Ltd. transferred the pledged shares in its favour, it was already holding the same in a capacity more or less identical to that of a trustee. Till the point of transfer of pledged shares, Perfect Softech Pvt. Ltd. could deal with the same only in terms of the Loan Agreement dated 18.08.2007. There was no need to transfer the pledged shares without any contingencies, as detailed in the Loan Agreement dated 18.08.2007, arising in the case. Once the specific contingency arrived, Perfect Softech Pvt. Ltd. availed its rights under the Loan Agreement dated 18.08.2007 and chose to transfer the pledged shares in its favour. Having availed its rights under the Loan Agreement dated 18.08.2007 vis-a-vis the pledged shares, Perfect Softech Pvt. Ltd. could not be permitted to unilaterally introduce new terms and conditions to the prejudice of the accused. The above conclusion would sustain even in the light of Clause 9 of the '*Indenture of Pledge for Term Finance*' dated 18.08.2007- executed along with the Loan Agreement dated 18.08.2007. Reason being the fact that the said clause is followed by Clause 13, which authorizes Perfect Softech Pvt. Ltd. to sell or dispose of the pledged shares in case of default in repayment of loan or interest. Having transferred the pledged shares in its favour as on 31.12.2007, the title passed unto Perfect Softech Pvt. Ltd and nothing was left behind to be held as a security against the accused any further. Clause 9 would have remained actionable had Perfect Softech Pvt. Ltd. not excercised the authority vested unto itself by Clause 13. Having invoked the latter clause, Perfect Softech Pvt. Ltd. extinguished its authority under Clause 9.

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18. In the considered opinion of this Court, complainant should have offered an explanation regarding the occasion/ cause which prompted Flat Earth Oil & Gas Pvt. Ltd. to issue fresh 02 cheques for a sum of Rs. 20 Crores in favour of complainant despite the transfer of pledged shares belonging to Flat Earth Oil & Gas Pvt. Ltd. In the absence of any such explanation, this court is constrained to hold that the cheque in question was issued without exchange of any valid consideration and that the same was not issued in discharge of any legal liability to that extent. Having ruled so, this Court feels that the accused have discharged their onus to rebut the statutory presumptions operating against them during the cross-examination of AR of complainant. Admittedly, complainant has not placed any other material on record to prove its case against the accused. That being so, all the accused deserved to be acquitted in the present case. In view of the above conclusion, there is no need to delve into the evidence led in defence by the accused.

19. Appeal filed by accused therefore stands disposed of in above terms. Needless to say, the impugned judgment dated 21.11.2016 passed by the Ld. Magistrate is hereby upheld.

20. Judicial file be consigned to Record Room as per rules.

Announced & Dictated in the
Open Court today i.e. 09.10.2025

LOVLEEN Digitally signed by LOVLEEN Date: 2025.10.09 17:30:46 +0530

(Lovleen)
ASJ-03 (South East)
Saket Courts, Delhi