



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-1384-1993

Reserved on : 17.01.2025

Pronounced on : 04.02.2025

State Bank of India

..... Appellant

Versus

Union Bank of India and another

..... Respondents

CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present : Mr. Anil Kumar Ahuja, Advocate
for the appellant.

Mr. Shailender Kashyap, Advocate
for the respondents.

VIKRAM AGGARWAL, J

This is plaintiff's appeal against the judgment and decree dated 14.12.1992, passed by the Court of learned Addl. District Judge, Ludhiana, allowing the appeal filed by the defendants and setting aside the judgment and decree dated 19.07.1990, passed by the Court of learned Sub Judge Ist Class, Ludhiana, vide which the suit for recovery of ₹88,700/- as principal amount and ₹40,559/- as interest, filed by the plaintiff, was decreed.

2. For the sake of convenience and clarity, parties shall be referred as per their original status.

3. The plaintiff (State Bank of India) filed a suit for recovery of ₹88700/- as principal amount and ₹40559/- as interest against the defendants (Union Bank of India). The controversy was that a demand draft dated 07.02.1980 for an amount of ₹88,700/- issued by the Panipat Branch of State



Bank of Patiala was presented for clearance by the Ludhiana Branch of the defendants-Bank to the Ludhiana Branch of the plaintiff-Bank on 09.02.1980. The same was cleared by the Ludhiana Branch of the plaintiff Bank. However, on 12.02.1980, the defendant-Bank informed the plaintiff-Bank that the draft looked suspicious. Upon receipt of the said information, the plaintiff-bank took up the matter with the Panipat Branch of State Bank of Patiala and it transpired that the draft in question had in fact been issued by them on 07.08.1979 for a sum of ₹10/- in favour of one Mr. P.K.Jain. It was, therefore, found that the draft which had been presented to the defendant-Bank and thereafter sent by the defendant-Bank to the plaintiff- bank had been materially altered in date, amount, payee and the drawee branch.

4. Upon inquiry, it was revealed that a savings bank account was opened in the Ludhiana Branch of the defendant-Bank in the name of one Gurmeet Kaur on 30.01.1980 without proper introduction and in violation of the standing practice amongst the bankers. It was averred that after the account had been opened, there was no turn over shown in the said account except the deposit of the draft in question. Immediately thereafter, i.e. on 11/12.02.1980, the defendant-Bank allowed heavy withdrawals despite knowing that the draft was suspicious and accordingly, ₹69,000/- stood withdrawn with only a balance of ₹19800/- remaining in the account.

5. It was averred that under the circumstances, the defendant-Bank had been negligent in making a fraudulent customer of their bank and then acting on behalf of such a person and negligently collecting the amount. It was averred that under the circumstances, the defendant-Bank had made



itself liable for the offence committed by Gurmeet Kaur. It was also averred that the defendant-Bank had failed to take appropriate action against the customer and had also violated the ethics of bankers by keeping the plaintiff-Bank in dark as to what action they proposed to take against the fraudulent customer and the introducer. No appropriate action was initiated for cheating, fraud and misappropriation against Gurmeet Kaur and her introducer. No criminal complaint was lodged nor any suit for recovery was filed.

6. It was averred that after the dispute had arisen, a communication dated 07.06.1980 was issued by the plaintiff-Bank to the defendant-Bank raising a dispute and subsequently seeking reference of the matter for arbitration. Many reminders were issued but ultimately the said request for referring the matter to arbitration was declined by the defendant-Bank vide communication dated 27.03.1982. Under the circumstances, the suit for recovery was filed.

7. The suit was resisted by the defendant-Bank. In the written-statement, certain preliminary objections as regards maintainability and locus-standi were raised. It was averred that the defendant-Bank was merely an agent of Gurmeet Kaur and in the course of banking business, it had presented a draft for and on behalf of Gurmeet Kaur for collection with the plaintiff-bank and the said draft had duly been encashed through clearing and the corresponding credit entry had been made in the account of the party who subsequently withdrew a part of the amount as per her needs. It was averred that the mistake if any, was committed by the plaintiff-bank for, it was the



plaintiff-Bank which cleared the draft.

8. On merits also, a similar stand was taken. The factual aspect of the draft etc. having been presented by Gurmeet Kaur and the same having been sent for clearing was admitted. The withdrawal of ₹69,000/- was also admitted. It was denied that the account had been opened without proper introduction. It was also averred that the introduction was done by an existing customer. It was further averred that after it came to notice that the draft was forged, further payment was stopped.

9. As regards arbitration, it was averred that since there was no privity of contract of plaintiff-bank and the defendant-bank, there was no question of the matter being referred for arbitration.

10. From the pleadings of the parties, the following issue were framed:-

1. *Whether plaintiff is entitled to recover the amount of damages from the defendants ?OPP*
2. *Whether the plaintiff has no locus standi to file the suit for want of privity of contract ? OPD*
3. *Whether the present suit in the eyes of law is not maintainable as alleged in para no.1 of the preliminary objection ? OPD*
4. *Relief.*

11. Parties led their respective evidence.

12. The trial Court decreed the suit filed by the plaintiff. The appeal filed by the defendants against the said decision was allowed and the suit was dismissed, leading to the filing of the present regular second appeal.

13. I have heard learned counsel for the parties and with their



assistance, have gone through the record.

14. Learned counsel for the plaintiff-Bank submitted that the First Appellate Court had gravely erred in allowing the appeal filed by the defendant-Bank and reversing the well reasoned judgment and decree passed by the trial Court. Learned counsel, besides giving the factual background, referred to the statements of witnesses as also the documentary evidence produced on record and submitted that it was the defendant-Bank alone which would be liable as it had been negligent in firstly opening the account without ascertaining the existence of Gurmeet Kaur and, thereafter, by sending the draft for clearance without confirming its authenticity and thereafter even permitting heavy withdrawals. Learned counsel submitted that the account was opened on 30.01.1980, the draft was of 07.02.1980, it was presented for clearance on 09.02.1980 and upon the same having been cleared on the same day, withdrawals were made on 09.02.1980 and 12.02.1980 amounting to ₹69,000/-. Reference was made to communications dated 12.02.1980 and 13.02.1980 issued by the plaintiff- bank vide which the defendant-Bank had been called upon to not disburse the payment.

15. Reference was also made to the provisions of Section 131 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the N.I.Act') and submitted that the protection available under the said provision could not be claimed by the defendant-Bank on account of the haste shown in opening the bank account and thereafter permitting heavy withdrawals.

16. Learned counsel also submitted that there was no occasion for the defendant-Bank to refuse the reference of the matter for arbitration and



this itself shows that the defendants were not willing to take responsibility of their negligent act.

17. Learned counsel referred to the judgment passed by the First Appellate Court and submitted that the same is not sustainable and, therefore, deserves to be set aside. In support of his contentions, learned counsel placed reliance upon the judgments of Supreme Court of India in *Kerala State Co-operative Marketing Federation versus State Bank of India and Ors.* 2004 (3) RCR (Criminal) 21, *Indian Overseas Bank versus Industrial Chain Concern* 1989 (2) LW 427; judgment of Delhi High Court in *Indian Overseas Bank versus HDFC Bank Ltd. and Another* 2018 (3) AD (Delhi) 388; judgments of Madras High Court in *The Vysya Bank Ltd., Madras versus Indian Bank, Madras* 1988 AIR (Madras) 256, *Vijay Bank Limited versus United Commercial Bank, 13/18, Thambu Chetty Street, Madras-1 and others* 1988 (2) LW 368, *United Bank of India, Madras versus Bank of Baroda, Madras* 1997 AIR (Madras) 23, *Indian Bank versus Catholic Syrian Bank Ltd.* 1981 AIR (Madras) 129; judgments of Kerala High Court in *Kannur District Co-Operative Marketing Federation versus Kerala State Co-operative Bank Ltd.* 2003 (2) CivCC 123, *Central Bank of India Ltd. versus Gopinathan Nair* 1972 KLT 518 and the judgment of Andhra Pradesh High Court in *Canara Bank, Nalgonda versus Nalgonda Cooperative Central Bank Ltd.* 2010 (5) R.C.R. (Criminal) 754.

18. Per contra, it was submitted by learned counsel representing the defendant-Bank that there is no illegality in the judgment passed by the First Appellate Court. Learned counsel submitted that the defendant-Bank was



only a collecting bank and the prime responsibility to see as to whether the cheque was genuine or not was that of the clearing bank i.e. the plaintiff-bank and once they had cleared the draft on the same day, there was no occasion for the defendant to have any suspicion. Despite this, it was the defendant-Bank only which informed the plaintiff-Bank on 12.02.1980 that the draft seemed to be suspicious whereafter, the plaintiff-Bank made inquiries from State Bank of Patiala, Panipat and found out that the document was materially altered.

19. Learned counsel submitted that the account in the name of Gurmeet Kaur had been opened on the introduction of an existing account holder and, therefore, it cannot be said that proper care was not taken at the time of opening the account. It was submitted that the First Appellate Court had duly considered the entire matter and had then set aside the judgment of the trial Court giving cogent reasons.

20. I have considered the submissions made by learned counsel for the parties and have, with their assistance, perused the record.

21. The question which arises for consideration of this Court is as to whether the protection of Section 131 of the N.I.Act would be available to the defendant and whether the defendant had acted in good faith and without negligence.

22. As regards the scope of second appeal, it is now a settled proposition of law that in Punjab & Haryana, second appeals preferred are to be treated as appeals under Section 41 of the Punjab Courts Act, 1918 and not under Section 100 CPC. Reference in this regard can be made to the



judgment of the Supreme Court in the case of *Pankajakshi (Dead) through LRs and others versus Chandrika and others (2016) (6) SCC 157* followed by judgments of the Supreme Court in the cases of *Kirodi (Since Deceased) through his Lr. Versus Ram Parkash & Ors. 2019 (3) R.C.R. (Civil) 168* and *Satyender and Ors. Versus Saroj and Ors. 2022 (12) Scale 92*. Relying upon the law laid down in the aforesaid judgments, no substantial question of law is required to be framed and this Court shall proceed to answer the question which arises for consideration.

23. Further, it would be apposite to refer to Section 131 of the N.I.Act, reference to which has been made during the course of arguments before the Courts, though, no reference to the same was made in the pleadings by either side. Be that as it may, Section 131 of the N.I.Act deals with non-liability of a banker receiving payment of a cheque and lays down as under:-

131. Non-liability of banker receiving payment of cheque.—
A banker who has in good faith and without negligence received payment for a customer of a cheque crossed generally or specially to himself shall not, in case the title to the cheque proves defective, incur any liability to the true owner of the cheque by reason only of having received such payment.

1[Explanation 2(I)].— A banker receives payment of a crossed cheque for a customer within the meaning of this section notwithstanding that he credits his customer's account with the amount of the cheque before receiving payment thereof.]

3[Explanation II.—It shall be the duty of the banker who receives payment based on an electronic image of a truncated cheque held with him, to verify the prima facie genuineness of



the cheque to be truncated and any fraud, forgery or tampering apparent on the face of the instrument that can be verified with due diligence and ordinary care.]”

24. A bare perusal of the said provision shows that two elements are essential for a bank which receives payments from a customer, to be non-liable in case the title to the cheque/draft proves defective. The said two elements are good faith and having acted without negligence.

25. A similar issue arose before the Supreme Court of India in *Kerala State Co-operative Marketing Federation versus State Bank of India and Ors.* (supra). In that case, the facts were noticed by the Supreme Court of India as under:-

“Briefly stated the facts are as follows:

The Appellant received a cheque for Rs. 1,00,000/- from the 3rd Respondent. The cheque was drawn on the 2nd Respondent Bank. The Appellant sent the cheque by post along with some other cheques. However, the cheque in question was stolen in post and was altered to read as if it was payable to Shri K. Narayhanan. A person calling himself K. Narayhanan opened a bank account with the 1st Respondent Bank on 24th December, 1982. The account was opened with a sum of Rs. 20/-. The customer then asked for a cheque book and was informed that the minimum balance had to be Rs. 100/- to obtain a cheque book. He therefore put in Rs. 80/- into the account. He was then issued a cheque book. Thereafter on 29th December, 1982 the cheque for Rs. 1,00,000/- was deposited into the account and the same



was collected by the 1st Respondent on behalf of its client. On 30th December, 1982 a sum of Rs. 50,000/- was withdrawn from the account just prior to stop instructions being received.

The said K. Narayhanan turned out to be a fictitious person. He was never traced again. The remaining balance of Rs. 50,000/- was ultimately returned to the Appellant. When the Appellants claimed the sum of Rs.50,000/- from the 1st Respondent they claimed protection of [Section 131](#) of the [Negotiable Instruments Act.](#)”

26. The Supreme Court of India referred to the judgment in the case of *Indian Overseas Bank versus Industrial Chain Concern* (*supra*) wherein the principles governing such cases had been noted. The supreme Court of India also referred to a number of other judgments and summarized the principles governing the liability of a collecting banker as under:-

11. The principles governing the liability of a collecting banker have also been extracted in the impugned judgment. They read as follows:

"(1) As a general rule the collecting banker shall be exposed to his usual liability under common law for conversion or for money had and received, as against the 'true owner' of a cheque or a draft, in the event the customer from whom he collects the cheque or draft has not title or a defective title.

(2) The banker, however, may claim protection from such normal liability provided he fulfils strictly the conditions laid down in [S. 131](#) or [S. 131A](#) of the Act and one of those conditions is that he must have received the payment in good faith and without negligence.



(3) It is the banker seeking protection who has on his shoulders the onus of proving that he acted in good faith and without negligence.

(4) The standard of care to be exercised by the collecting banker to escape the charge of negligence depends upon the general practice of bankers which may go on changing from time to time with the enormous spread of banking activities and cases decided a few decades ago may not probably offer an unfailing guidance in determining the question about negligence today.

(5) Negligence is a question of fact and what is relevant in determining the liability of a collecting banker is not his negligence in opening the account of the customer but negligence in the collection of the relevant cheque unless, of course, the opening of the account and depositing of the cheque in question therein from part and parcel of one scheme as where the account is opened with the cheque in question or deposited therein so soon after the opening of the account as to lead to an inference that the depositing the cheque and opening the account are interconnected moves in a integrated plan.

(6) Negligence in opening the account such as failure to fulfill the procedure for opening an account which is prescribed by the bank itself or opening an account of an unknown person or non-existing person or with dubious introduction may lead to a cogent, though not conclusive, proof of negligence particularly if the cheque in question has been deposited in the account soon after the opening thereof.

(7) The standard of care expected from a banker in collecting the cheque does not require him to subject the cheque to a minute and microscopic examination but



disregarding the circumstances about the cheque which on the face of it give rise to a suspicion may amount to negligence on the part of the collecting banker.

(8) The question of good faith and negligence is to be judged from the stand point of the true owner towards whom the banker owes no contractual duty but the statutory duty which is created by this section and it is a price which the banker pays for seeking protection, under the statute, from the otherwise larger liability he would be exposed to under common law.

(9) Allegation of contributory negligence against the paying banker could provide no defence for a collecting banker who has not collected the amount in good faith and without negligence."

27. It is on the touchstone of these principles and the provisions of Section 131 of the N.I.Act that we shall have to test as to whether the defendant-Bank can be said to have acted in good faith and without negligence or not.

28. The account in the name of Gurmeet Kaur was opened on 30.01.1980. As per DW1 J.S.Khare, who was the Branch Manager of the defendant-Bank (the Mandi Kesar Ganj Branch, Ludhiana from July, 1976 to October, 1982), the same was opened on the introduction of one Surjeet Singh Manku, who was an existing customer of the bank having account No.1311, In the cross-examination, this witness admitted that they did not try to call or contact Gurmeet Kaur after they came to know that the draft was forged. He deposed that Surjeet Singh Manku was called to inform that he knew Gurmeet Kaur and when the bank asked him to produce the said lady,



he failed to produce her. He further admitted that no report was lodged with the police authorities but tried to cover up by saying that the matter had been reported to the higher authorities.

29. Similarly, DW2 Surinder Kumar Gupta, who was the Branch Manager of the Mandi Kesar Ganj Branch, Ludhiana of the defendant-Bank from 1967 to 1980, stated in his cross-examination that they did not know if any steps were taken by the bank after coming to know that the draft was forged. He admitted that it is the bank sending the draft for collection to scrutinize that the draft is genuine and thereafter in the same breath, he retracted from the said statement. He then denied many questions about the day to day working of the bank by saying that he was not aware. Then he again admitted that it was the duty of the bank sending the draft for collection/clearance to ascertain that the same was genuine.

30. DW3 Brahm Goyal had remained posted in the same branch w.e.f. December, 1977 to June, 1984. He had encashed the cheques presented by Gurmeet Kaur after the draft had been cleared. In the cross-examination, he deposed that a cheque book had been issued to Gurmeet Kaur. When confronted, he stated that he had not brought the rules of savings bank account for the year 1980.

31. The plaintiff-Bank on the other hand, also produced six witnesses including a document expert Diwan K.S.Puri as PW6.

32. At the first blush, it would appear that it was for the plaintiff-Bank to have scrutinized the draft before clearing it. However, if one goes through Section 131 of the N.I.Act and the judgments of the Supreme Court



in the cases of *Kerala State Co-operative Marketing Federation versus State Bank of India and Ors. and Indian Overseas Bank versus Industrial Chain Concern* (supra), it would emerge that the defendant-Bank had been negligent in handling the issue. The account in the name of Gurmeet Kaur was opened on 30.01.1980. The demand draft was of 07.02.1980. It was presented to the defendant-Bank on 09.02.1980 and was then sent to the plaintiff-Bank for clearance and was cleared by the plaintiff bank on 09.02.1980 itself. Thereafter, by 12.02.1980, a sum of ₹69,000/- was withdrawn by Gurmeet Kaur. When the draft was found to be forged, it did not initiate any action either against Gurmeet Kaur or the introducer Surjit Singh Manku. The introducer was not produced in evidence also. No criminal action was initiated. I have, therefore, no hesitation in holding that due care was not taken by the Bank in opening the account.

33. In the case of *Indian Overseas Bank versus Industrial Chain Concern* (supra), the Supreme Court of India while referring to practice and law of banking by H.P.Sheldon, observed that before opening an account for a customer who is not already known to him, a banker should make proper preliminary inquiries. In particular, a banker should obtain reference from all responsible persons with regard to the identity, integrity and reliability of the proposed customer. In the considered opinion of this Court, no such proper inquiry seems to have been made by the defendant-bank. Further, while culling out the principles governing the liability of a collecting banker, the Supreme Court had held that negligence is a question of fact and what is relevant in determining the liability of a collecting banker is not his



negligence in opening the account of the customer but negligence in the collection of the relevant cheque unless, the opening of the account and depositing of the cheque in question form a part and parcel of one scheme i.e. where the account is opened and the cheque in question is deposited therein so soon after the opening of the account as to lead an inference that the depositing of the cheque and opening of the account were inter-connected moved in a integrated plan.

34. In *Kerala State Co-operative Marketing Federation versus State Bank of India and Ors.'s case* (supra) also, the transaction of opening the account, depositing of the cheque and withdrawal of the amount were very near to each other and were found to be a part of the same transaction as they had taken place in close proximity to each other. In the present case, had the account been opened much before the presentation of the draft and the amount had been withdrawn much after the clearance of the draft, the defendant-Bank could have raised the plea of protection as envisaged under Section 131 of the N.I.Act. However, the proximity in which the account was opened, the draft was deposited, the same was sent for clearance and a substantial amount was withdrawn clearly shows the purpose with which the bank account had been opened and the forged draft had been presented.

35. In the considered opinion of this Court, the defendant-Bank did not exercise due care and caution in sending a draft for a heavy amount for clearance which had been presented by a new customer who, immediately after clearance, withdrew a substantial portion of the amount. It has to be borne in mind that today, ₹88000/- may seem to be a meagre amount but in



the year 1980, a sum of ₹88000/- was a very heavy amount.

36. The trial Court considered the entire matter from the correct perspective and decreed the suit whereas, the First Appellate Court, it appears that, could not appreciate the matter from the correct perspective and erroneously arrived at a conclusion that the defendant-Bank had not acted negligently.

37. In view of the discussion in the preceding paragraphs, this Court arrives at the conclusion that the judgment passed by the First Appellate Court, is not sustainable and that the trial Court had rightly decreed the suit filed by the plaintiff-Bank.

In view of the above, the present appeal is allowed. The judgment and decree dated 14.12.1992, passed by the Court of Addl. District Judge, Ludhiana, is set aside and the judgment and decree dated 19.07.1990, passed by the Court of learned Sub Judge Ist Class, Ludhiana vide which the suit filed by the plaintiff-Bank was decreed, is affirmed.

Pending application(s), if any, stand(s) disposed of accordingly.

(VIKRAM AGGARWAL)
JUDGE

Reserved on : 17.01.2025
Pronounced on : 04.02.2025
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Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No