

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

Reserved on: February 26, 2015

Pronounced on: March 20, 2015

+ **WP(C) 6201/2014**

AXIS BANK

..... Petitioner

Through: Mr. Sanjay Bhatt and Mr. Abhishek  
Anand, Advs.

versus

PUNJAB NATIONAL BANK & ANR

..... Respondents

Through: Mr. Sanjay Katyal and Mr. S. S.  
Katyal, Advs.

**CORAM:**

**HON'BLE MR. JUSTICE S. RAVINDRA BHAT**

**HON'BLE MR. JUSTICE R.K.GAUBA**

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1. Two banks are embroiled in this litigation, each accusing the other of negligence in facilitating fraudulent encashment of two forged demand drafts by an imposter resulting in wrongful loss to one (the drawer as well as drawee), part of resultant liability having been fastened on the other (the collecting bank).

2. The Original Application (OA) No. 108/2004 under Section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993

(hereinafter referred to as “the RDDBFI Act”) had been instituted before the Debts Recovery Tribunal (hereinafter referred to as “the DRT”) on 22.11.2004 by Punjab National Bank (the first respondent) impleading the Axis Bank (the petitioner) and one Mr. Dinesh Arora (the second respondent) as the defendants No. 1 and 2 for recovery of a sum of ₹13,10,044/- along with *pendente lite* and future interest @ 14.75% per annum. The OA was allowed by the DRT by final order passed on 30.01.2013 in favour of the applicant Punjab National Bank (PNB) though apportioning the liability against the petitioner bank (Axis Bank) only to the extent of one-third of the amount in dispute, issuing recovery certificate, insofar as Axis Bank is concerned in the sum of ₹8,50,100/- only, holding the other respondent liable for recovery of a sum of ₹8,50,100/- with simple interest @12%, incidental expenses and other charges from the date of filing of the OA till realization. The said order and recovery certificate issued in its wake by DRT, were challenged by the Axis Bank before Debts Recovery Appellate Tribunal (hereinafter referred to as “the DRAT”) through appeal No. 1252/2013 which, however, was dismissed by order dated 02.07.2014 which is under challenge through the writ petition at hand.

3. The background facts of the controversy are not very complicated. The second respondent had approached Axis Bank to open an account in its branch situate at Plot No. 5 and 6, Block – D, Local Shopping Complex, Pitampura, Delhi in the year 2001, submitting with the bank account opening form copies of election identity card and PAN card, pursuant to which savings bank account No. 040010100069720 was opened on 27.10.2001. On 30.10.2001, the said branch of the Axis Bank sent a communication styled as “letter of thanks” addressed to the second

respondent, explained as a precaution “to check the authenticity of the address furnished”. On 03.11.2001, a cheque book was collected by the second respondent from the said branch. It is stated by Axis Bank that the cheque book was issued, as a matter of abundant caution, only upon the production of the original letter of thanks issued on 30.10.2001.

4. On 01.12.2001, the account holder (second respondent) presented demand draft bearing No. RYS944380 dated 26.11.2001 purporting to have been issued by PNB through its Ratgal, Kurukshetra (Haryana) branch for an amount of ₹3,58,700/- with branch Sl. No. 762/01, for clearing in his said savings bank account. The said demand draft dated 26.11.2001 was presented on 01.12.2001 by Axis Bank for encashment before the Centralized Draft Payable Centre (CDPC) of PNB which made the payment to Axis Bank on the same date whereupon the amount was credited in the savings bank account of the second respondent.

5. On 10.12.2001, the second respondent presented another demand draft bearing No. RYS314055 dated 06.12.2001 purporting to have been issued by Pipli, Kurukshetra (Haryana) branch of PNB for an amount of ₹4,97,400/- with branch Sl. No. 312/01, for clearing in his savings bank account. The demand draft dated 06.12.2001 was also presented for encashment by Axis Bank to the CDPC of PNB on 10.12.2001 and payment was received by Axis Bank thereagainst on the same date whereupon the amount was credited in the savings bank account of the second respondent.

6. It appears that on 19.12.2001, the Ratgal, Kurukshetra and Pipli Kurukshetra branches of PNB informed that both the said demand drafts were not issued by them. The Ratgal branch informed that instead demand draft bearing No. SGL944381 with branch Sl. No. 762/01 dated 06.12.2001

had been issued in favour of Registrar, Delhi University for an amount of ₹100/-. Similarly, the Pipli branch informed that instead it had issued draft bearing No. SEC314055 with branch Sl. No. 312/01 dated 06.12.2001 in favour of National Institute of Technology for the amount of ₹100/-.

7. Upon information to above effect being communicated by PNB to Axis Bank on 19.12.2001, the available balance in the savings bank account of the second respondent was frozen and intimation to that effect sent to PNB by letter dated 27.12.2001. On the date the account was frozen, there was outstanding balance of ₹1,96,351/- lying in the account of second respondent.

8. It appears that PNB lodged a First Information Report (FIR) with SHO, Police Station I.P. Estate, New Delhi on 29.12.2001. There was some confusion as to the jurisdiction. Eventually, PNB lodged a criminal complaint in the court of Chief Metropolitan Magistrate, New Delhi on 21.08.2003, the matter arising wherefrom is stated to be pending.

9. The PNB issued a legal notice on 28.01.2002 to Axis Bank demanding refund of ₹8,56,100/-, it being the total value of the two forged demand drafts, attributing, *inter alia*, negligence on the part of the noticee, with the averments that RBI guidelines have not been followed while allowing the savings bank account to be opened without completion of KYC (Know Your Customer) norms, in that no introduction from a respectable person known to the bank branch had been secured.

10. The Axis Bank resisted the claim of PNB by reply dated 18.03.2002, *inter alia*, taking the position that there was no negligence on its part claiming protection under Section 131 of the Negotiable Instruments Act.

11. Since Axis Bank did not comply with the demand in the legal notice

dated 28.01.2002, PNB filed the OA seeking recovery from Axis Bank as also the account holder (the second respondent) claiming that they were jointly and severally liable. The OA was resisted by Axis Bank, amongst others, on the ground of the claim being time-barred and the amount sought to be recovered being not within the jurisdiction of DRT under RDDBFI Act. It also argued that since the claim arose out of an alleged fraudulent transaction, it would not fall within the purview of “debt”, as defined in RDDBFI Act. It seems that the account holder (second respondent) did not appear and thus, the proceedings against him were concluded *ex-parte*.

12. The claim of PNB was contested by the Axis Bank. The plea of limitation bar was rejected on the reasoning that the OA had been presented on 22.11.2004 within three years of the dates on which the two demand drafts had been sent for collection. The objection as to pecuniary jurisdiction was repelled by referring to the element of interest and other charges which also had been claimed over and above the principal amount. The argument of the DRT not being the proper forum to decide a claim arising out of alleged fraudulent transaction was rejected on the basis of decision of this court in the case of *SBI v. Raman Kapur*, 157 (2009) Delhi Law Times 12. The claim of the Axis Bank regarding protection under Section 131 Negotiable Instruments Act was examined alongside PNB’s plea of its protection under Section 85. The DRT held both the banks to be liable of negligence and consequently apportioned the liability of Axis Bank to the extent of one-third. It must, however, be added here that this being the conclusion reached in Para 18 of the final order, in the operative part, the DRT failed to bring clarity by omitting to add that the liability of the appellant herein would be restricted to one-third of the decretal amount.

13. The Axis Bank filed appeal before DRAT but, as indicated earlier, unsuccessfully.

14. The appellant assails the orders passed by the DRT and DRAT through the writ petition at hand primarily on the basis of two submissions; first, that the claim of PNB having arisen out of fraudulent transaction concerning the two demand drafts, it could not have been pressed as a claim under RDDBFI Act before the DRT and, second, that though there may have been some want of care on the part of the appellant bank in allowing the account to be opened, this circumstance alone is not sufficient to attribute negligence on its part concerning the transactions respecting the two bank drafts since the circumstances antecedent thereto, or prevalent at the relevant point of time, were not so out of ordinary course as would have aroused doubts impelling inquiry to be made at its end. In the context of the second submission, the appellant bank argues that in the face of clear finding in the impugned order that PNB had not been vigilant (and consequently had been negligent) in remitting the value of the drafts when presented for clearing, liability could not have been fastened on the collecting bank.

15. There is no dispute, insofar as the appellant and the first respondent herein are concerned, that the two demand drafts which gave rise to the claim before DRT were forged instruments. The argument of the appellant was that a claim based on such facts cannot be subject matter of an application before DRT under RDDBFI Act on the reasoning that the amount claimed due cannot be treated as “debt”, within the meaning of the expression defined in Section 2(g). The clause defining the expression “debt” reads as under:-

*“debt” means any liability (inclusive of interest) which is*

*claimed as due from any person by a bank or a financial institution or by a consortium of banks or financial institutions during the course of any business activity undertaken by the bank or the financial institution or the consortium under any law for the time being in force, in cash or otherwise, whether secured or unsecured, or assigned, or whether payable under a decree or order of any civil court or any arbitration award or otherwise or under a mortgage and subsisting on, and legally recoverable on, the date of the application.”*

16. *Per contra*, the first respondent (PNB ) contends that the amounts were remitted erroneously since the forgery could not be immediately detected. It argues that since there was no obligation to pay against forged instruments, the amount can be recovered as a “debt”.

17. In *United Bank of India v. Debts Recovery Tribunal* (1999) 4 SCC 69, the challenge was to the conclusion of the High Court that the DRT did not have the jurisdiction in a claim of an “undetermined sum”. The Supreme Court ruled that the expression “debt” has to be given the widest amplitude to mean “any liability” which is alleged by a bank as due from any person during the course of any business activity undertaken by the bank either in cash or otherwise, whether secured or unsecured, whether payable under a decree or order of any court or otherwise and legally recoverable on the date of the application. The key words, thus, are “legally recoverable”.

18. This court had the occasion to examine the width and scope of the expression “debt”, as defined in RDDBFI Act, *albeit* in a slightly different fact-situation, in the case of *M/s Panjwani Packaging Ltd. & Ors. v. Allahabad Bank*, writ petition (civil) 1803/2015 (decided on 25.02.2015) wherein it was held as under:-

*“14. ... the money credited by the bank in the account of a*

*customer by mistake, or under coercion, when retained by the customer or wrongfully withdrawn or refused to be returned, when demanded, amounts to unjust enrichment. The fact as to whether the payment was made voluntarily or otherwise is of no consequence so long as the payment was made mistakenly (or pursuant to coercion) and was not due. The mistake may have occurred inadvertently or be the result of act of commission or omission of a third person (including an employee, agent etc.) actuated by intent to deceive or defraud. By virtue of Section 72 of the Contract Act, the customer receiving the money in such facts and circumstances is bound to repay or return it. On account of such obligation to repay or return the money received by mistake, or under coercion, such amount is rendered due from the customer to the bank and thus in the nature of a liability constituting a “debt” which the bank may lawfully claim by way of application to the DRT under the provisions of RDDBFI Act, subject, of course, to all just exceptions including the bar of limitation.”*

19. Reliance has been placed on the judgment rendered by a Ld. Single Judge of this court in the case reported as *SBI v. Raman Kapur*, 157 (2009) Delhi Law Times 12 to argue that DRT would have no jurisdiction to entertain the claim of the bank founded on the allegation that it was a liability arising out of fraud played upon it. In that case, the bank had filed a civil suit for recovery of the amount that had been allegedly siphoned off by one of its employees in collusion with other defendant playing fraud. The objection raised to the maintainability of the suit before the High Court exercising its original jurisdiction and praying for its transfer under Section 17 of RDDBFI Act to the DRT was rejected with observations to the following effect:-

*“3. It is clear from the definition of ‘debt’ as appearing under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 that only those claims can be made before the Debts*

*Recovery Tribunal where the due amount is a liability arising in course of any business activity undertaken by the bank. No amount claimed by the bank as due from a person, who played fraud, can be considered as a liability claimed by the bank due to business activity undertaken by the bank. Neither the amount defrauded by an employee of the bank in collusion with others can be considered as a debt or liability arising in course of business activity. I, therefore consider that the Tribunal will have no jurisdiction to entertain this claim of the bank. The suit of the bank as filed before this Court is within the jurisdiction.”*

20. With respect to the Ld. Single Judge, we disagree. As concluded by us in the case of *M/s Panjwani Packaging Ltd. & Ors. v. Allahabad Bank* (supra) through observations extracted above, the value of the demand drafts was remitted by the PNB to the Axis Bank for being credited in the account of the second respondent “by mistake”, inasmuch as the demand drafts against which such remittances were made were forged and fabricated instruments in which respect PNB owed no liability to pay. The money having reached in the account of the second respondent, as a result of the remittance made by mistake, the credit obtained by the latter amounted to unjust enrichment. It is inconsequential whether the mistake occurred inadvertently or was a result of deliberate acts indulged in with intent to deceive or defraud. The credit for the money obtained from erroneous remittance being a wrongful gain, it is the liability of the person receiving it wrongfully to return it in terms of Section 72 of the Contract Act.

21. The expression “debt” as used in RDBFI Act would, thus, include liability arising out of fraudulent transaction causing wrongful loss to a bank or financial institution. It is not correct to contend that if a cause is founded on the allegation that a debt or liability has been incurred due to fraud or by

way of deceit, the recovery proceedings cannot be brought to a forum in the nature of DRT under RDDBFI Act. The amounts represented by the aforementioned transactions, thus, relate to a liability arising out of the business activity undertaken by the bank, one which is “legally recoverable” by it. The claim of PNB before DRT was, thus, for recovery of a “debt” and maintainable under Section 19 of RDDBFI Act.

22. The Negotiable Instruments Act, 1881 does not define the expression “(demand) draft”. It defines, in Section 6, a negotiable instrument commonly known as “cheque” as “a bill of exchange drawn on a specified banker”, such expression also including the electronic image of a truncated cheque and a cheque in the electronic form. The expression “bill of exchange”, in turn, is defined, in Section 5, as “an instrument in writing containing an unconditional order, signed by a maker, directing a certain person to pay a certain sum of money only to, or to the order of, a certain person or to the bearer of the instrument”.

23. The word “draft” is used in the Negotiable Instruments Act in Section 85-A (in the context of discharge from liability) in the following terms:-

***“85-A. Drafts drawn by one branch of a bank on another payable to order.—Where any draft, that is, an order to pay money, drawn by one office of a bank upon another office of the same bank for a sum of money payable to order on demand, purports to be indorsed by or on behalf of the payee, the bank is discharged by payment in due course.”***

24. Section 131-A was inserted in Negotiable Instruments Act later so as to extend the provisions contained in Chapter XIV (“Of crossed cheques”) to instruments in the nature of a “draft” as defined in Section 85-A, “as if the draft were a cheque”. Demand Draft, also known as bank draft, and at times

described as “Banker’s cheque” or “pay order”, are species of the genre generally known as “cheque”. Demand drafts, or bank drafts or banker’s cheque or pay order, are generally issued by a bank acknowledging receipt of the value and promising to pay the same to the person in whose favour, or to whose order, the money represented by it is to be paid (“payee”).

25. Section 7 of Negotiable Instruments Act renders the bank issuing an instrument in the nature of a draft to be the “drawer” and since it is an order to another office of the same bank called upon to pay, the same very bank is also the “drawee” in its respect. In the event of the order in the draft being honoured, the same bank becomes the “acceptor”, an expression defined by Section 7 in following terms:-

*“**Acceptor.**—After the drawee of a bill has signed his assent upon the bill, or, if there are more parts thereof than one, upon one of such parts, and delivered the same, or given notice of such signing to the holder or to some person on his behalf, he is called the acceptor.”*

26. The appellant claims protection under Section 131 of Negotiable Instruments Act which reads 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.*

*Explanation 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.*

*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.*”

[emphasis supplied]

27. A demand draft or a cheque is a bill of exchange payable on demand. In order to secure payment against such instruments, they are commonly presented in the usual course of business by the payee to the drawee bank through the bank where the payee holds an account. The bank which is bound to pay against the instrument is the agent of its drawer. Similarly, the collecting bank which presents the instrument on behalf of its customer acts, for purposes of collection, as an agent of the latter. In that capacity, the collecting bank is entitled to all the rights of an agent against his principal and, thus, can claim indemnity from the customer on whose behalf it may have presented the instrument which is returned dishonoured such that it can debit him to the extent of value of the dishonoured instrument or with any amount for which it has been found liable to a true owner. The collecting bank is not liable where it acts reasonably and does not indulge in any negligence respecting the transaction concerning wrongful presentation or receives value of a forged instrument.

28. As mentioned earlier, by virtue of Section 131-A, the afore-quoted provision contained in Section 131 (falling in Chapter XIV) applies to a case of demand draft as well, “as if the draft were a cheque”. Section 131 is a protection meant for a collecting bank. Since the collecting bank generally acts as an agent of its customer, it is not expected to take a direct

responsibility for the negotiable instrument deposited with it for presentation to the bank on which it is drawn. Nonetheless, it is expected to be vigilant against forgery or attempts to deceive or defraud. In order to show that the collecting bank acted in good faith and was not negligent, it must be in a position to confirm the genuineness of the identity of the customer on whose behalf it purports to collect. Generally speaking, such scrutiny of the identity of the customer would be undertaken when his request for account to be opened is entertained. Though the second explanation to Section 131 quoted above relates to cheques presented electronically, it provides some guidance as to the extent of scrutiny of the negotiable instrument presented through it. To fasten the responsibility for cheating on account of fabrication, the forgery or tampering must be such as can be detected from the face of the instrument by applying ordinary care and diligence.

29. The question as to the extent to which a collecting banker can be held liable for wrongful encashment of negotiable instruments has been subject matter of debate in a number of cases.

30. In *Brahma Shum Shere Jung Bahadur and another v. Chartered Bank of India, Australia and China and others*, AIR 1956 Cal 399, an account-holder had brought a suit for recovery, *inter alia*, against his own banker for the wrongful loss suffered as a result of the account having been debited against a cheque presented by another person after its fraudulent alteration into a cheque for a large sum of money. The bank contested the claim essentially claiming protection under Section 131 of Negotiable Instruments Act, also seeking to attribute negligence of the owner (the customer). While rejecting the claim against the bank, on facts, holding that it was entitled to debit the amount to the account of the plaintiff since the cheque at the time

of presentation for encashment did not disclose any traces of alterations or obliterations, the payment being “payment in due course” and it being according to the “apparent tenor of the cheque”, the mere circumstance of a different handwriting appearing in the body of the cheque not being one “which could have aroused suspicion in the minds of the officials of bank”, it was observed, in the context of Section 131, as under:-

*“Section 131 makes it clear that when a banker receives from its customer a cheque crossed in its customer’s behalf, the fact that the customer’s title to the cheque is defective does not render the banker liable to the true owner. But the protection under the section is afforded only if the banker has received payment in good faith and without negligence, otherwise the bank which receives payment on a forged cheque or a cheque to which the customer has no title or only defective title, is liable in action for conversion to the title owner.”*

[emphasis supplied]

31. The court added that the question as to whether a bank is guilty of negligence depends on the particulars of each case though the onus of proving “good faith” and “absence of negligence” has to be on the banker claiming such a protection.

32. In the case reported as *Indian Overseas Bank v. Industrial Chain Concern* (1990) 1 SCC 484, one ‘S’ was Manager of the respondent firm ‘Industrial Chain Concern’. He, representing himself as the sole proprietor of the firm, had approached the Manager of a branch of the appellant Bank for opening of a current deposit account in the name of the said firm. As the Manager of the Bank knew ‘S’, being his erstwhile classmate, he did not check up the address given and instead gave the introduction and on that basis an ordinary current deposit account was opened by Account Opening

Form under the title Industrial Chain Concern on the cash deposit of ₹100. The case of Industrial Chain Concern was that ‘S’, as its Manager, had received drafts and cheques amounting to ₹26,383.49 sent by the parties to whom the firm had supplied goods and that he, after opening the said ‘fictitious account’ in the aforesaid branch of the Bank, had paid in the stolen drafts and cheques and the Bank collected them and had allowed ‘S’ to withdraw the same thereby defrauding the respondent. The firm filed a suit for recovery of the said amount with interest alleging the Bank had been guilty of negligence and conversion. The trial court decreed the suit and the High Court dismissed the Bank’s appeal.

33. In the appeal before the Supreme Court, the appellant bank claimed immunity on the ground that it had not been negligent either at the stage of opening of the account or when the cheques were presented for collection. The court ruled on the issue of “standard of care” at the stage of opening an account in the following manner:-

*“26. We have already observed that the principle enunciated in the Commissioners of Taxation v. English Scottish and Australian Bank [1920 AC 683] is that the opening of the account is material as shedding light on the question whether there was negligence in collecting a cheque does bring out the true position that there must be sufficient connection established between the opening of the account and the collection of the cheque before a defence under section 131 could be held to be barred. The question would then be one of facts as to how far the two stages can be regarded as so intimately associated as to be considered as one transaction. ... Even if there was negligence in opening of the account that act ipso facto would not result in loss to the true owner of the cheque collected. While collecting the cheque for a customer the bank is under obligation to present it promptly so as to avoid any loss due to change of position. When it receives the*

*money collected then also there is no direct loss to the true owner. It is only when the amount is paid or withdrawn by the customer that the loss results. During this period what is important to note is that at every step in collection of the money and making payment the banker is bound by the banker--customer relationship and rights and obligations flowing therefrom. Even so, if there was anything to rouse suspicion regarding the cheque and ownership of the customer the banker may find itself beyond the protection of section 131. The scope or ambit of possible suspicion will depend on various situations that may have prevailed between the drawer of the cheque and the customer...*

*27... It is a settled law that the test of negligence for the purpose of section 131 of the Act is whether the transaction of paying in any given cheque coupled with the circumstances antecedent and present is so out of the ordinary course that it ought to arouse doubts in the banker's mind and cause him to make inquiries. ... The banker is bound to make inquiries when there is anything to rouse suspicion that the cheque is being wrongfully dealt with in being paid into the customer's account. However, the banker is not called upon to be abnormally suspicious ...*

[emphasis supplied]

34. Quoting with approval, the English decision reported as *Commissioner of Taxation v. English, Scottish and Australian Bank*, 1920 AC 683 for observing that question of bank's negligence in opening the account may not be associated with the question of negligence in collecting cheques for the customers paid into such accounts, though the circumstances connected with the opening of an account "may shed light on the question whether there was negligence in collecting a cheque", and following the ruling of House of Lords in *Lloyds Bank Ltd. v. E.B. Savory and Company*, 1933 AC 201: 1932 All ER Rep 106: 38 Com Cas 115, the court ruled thus:-

*“25. To enable a bank to avail the immunity under section 131 as a collecting banker he has to bring himself within the conditions formulated by the section. Otherwise he is left to his common law liability for conversion or for money had and received in case of the person from whom he took the cheques having no title or defective title. The conditions are:*

*(a) that the banker should act in good faith and without negligence in receiving a payment, that is, in the process of collection, (b) that the banker should receive payment for a customer on behalf of him and thus acting as a mere agent in collection of the cheque and not as an account holder (c) that the person for whom the banker acts must be his customer and (d) that the cheque should be one crossed generally or especially to himself. The receipt of payment contemplated by the section is one from the drawee bank. It is settled law that the onus of bringing himself within the section rests on the banker. In *Capital and Counties Bank v. Gordon*, 1903 AC 240: 88 LT 574: 19 TLR 402: 8 Com Cas 221 as we have seen, the conception of a collecting banker was that of "receiving the cheque from the customer, presenting it and receiving the money for the customer, and then, and not till then, placing it to the customer's credit, exercising functions strictly analogous to those of a clerk of the customer sent to a bank to cash an open cheque for his employer." If the banker performs these functions in course of his business, in good faith and without negligence he will be within section 131 of the Act.”*

*[emphasis supplied]*

35. In *Kerala State Co-operative Marketing Federation v. State Bank of India & Ors.*, II (2004) BC 1 (SC), the facts were similar to those of the case at hand. The bank account had been opened with the respondent bank by a fictitious person. A cheque stolen during postal transit had been altered so as to be read as payable to the account-holder. The cheque was deposited whereupon amount was collected by the respondent bank. When the fraud came to light, the balance in the account in question was restored by the

bank to the plaintiff. In due course, the drawee bank sued for recovery to the extent of wrongful loss. The collecting bank contested, *inter alia*, pleading protection under Section 131 of Negotiable Instruments Act. This plea was upheld by the High Court. The claimant carried appeal before the Supreme Court, *inter alia*, alleging that the collecting bank had not discharged its burden so as to show it had acted in good faith and without negligence. The Supreme Court culled out the principles governing the liability of a collecting banker (in Para 10 of the reported judgment) as under:-

*"(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 no 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 Section 131 or Section 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."

[emphasis supplied]

36. In the case of *Kerala State Co-operative Marketing Federation* (supra), on facts, it was held that the bank was liable since the transactions concerning the opening of the account, deposit of the forged instrument and its withdrawal took place in close proximity of each other so as to be treated as “all part of the same transaction”, in that the account-holder had given an absolutely vague address; the bank had made no inquiry in such regard or as to the creditworthiness of the account-holder, and further, no inquiry was made by the bank with the introducer after the forgery had been brought to light and notice for stop payment issued.

37. Both the DRT and DRAT have returned concurrent findings of fact that the appellant bank had been negligent at the stage of allowing the account to be opened by the second respondent. No introduction from a known customer of the bank was obtained. It appears that the documents submitted as proof of identity were not verified. They have turned out to be fake. Clearly, there was no due inquiry as to the identity or genuineness of the person who opened the account. The plea that the bank, as per the practice adopted, had taken care not to issue the cheque book till the customer appeared with the original letter of thanks sent to the declared address is insubstantial. This, by no stretch of reasoning, can be accepted as due inquiry at the threshold for entertaining a new customer.

38. To deny to the appellant (the collecting bank) the statutory protection of Section 131 of Negotiable Instruments Act, what has to be proved is that it had failed to exercise due diligence or act in good faith so as to be attributed negligence at the time of making over of the negotiable instruments in question for collection to the drawer/drawee bank. Unless, of course, there is material to show sufficient connection between the opening

of the account and the collection of the money against such instruments such that the transactions involving the collection turn out to be so out of ordinary course that it ought to have aroused doubts in the mind of the collecting bank, liability cannot be fastened on the latter.

39. It is pertinent to note that in *Industrial Chain Concern* (supra) while holding the bank to be “not negligent”, the Supreme Court (in Para 37) observed thus:-

*“37...that expansion of the banker's liability and corresponding narrowing down of the banker's protection under the provision of section 131 of the Act may make the banker's position so vulnerable as to be disadvantageous to the expansion of banking business under the ever expanding banking system. This is because a commercial bank, as distinguished from a Central bank, has the following characteristics, namely (a) that they accept money from, and collect cheques for, their customers and place them to their credit; (2) that they honour cheques or orders drawn on them by their customers when presented for payment and debit their customers accordingly; and (3) that they keep current account in their books in which the credits and debits are entered. The receipt of money by banker from or on account of his customer constitute it the debtor of the customer. The bank borrows the money and undertakes to repay it or any part of it at the branch of the bank where the account is kept during banking hours and upon payment being demanded. The banker has to discharge this obligation and normally the banker would not question the customer's title to the money paid in. Applying the above principles of law to the facts of the instant case we are not inclined to hold that the Bank was negligent either in collecting the cheques and drafts or allowing Sethuraman to withdraw the proceeds.”*

40. The factual matrix of the case at hand shows that the account was opened on 27.10.2001 and the first forged demand draft was presented for

collection one month thereafter i.e. on 01.12.2001. The second forged draft was similarly presented ten days thereafter i.e. on 10.12.2001. While the credits against the two demand drafts had been received (on the same date as of presentation in each case), the account-holder (second respondent) having obtained a cheque book on 30.10.2001 started making withdrawals. Copy of the statement of account (Annexure P-8) shows that initially cash withdrawals were made in small amounts of ₹2,000/-, ₹3,000/-, ₹4,000/- or so in several instalments, followed by some large withdrawals against cheques on 04.12.2001, 05.12.2001 and 12.12.2001. The forgery was detected by PNB on 19.12.2001 and the appellant bank was informed eight days thereafter i.e. on 27.12.2001. The account was frozen with outstanding balance of ₹1,96,351/-, immediately upon such intimation being received.

41. Whilst we agree that the appellant had been negligent in allowing account to be opened, we are unable to locate on the record any material to show that it had failed to exercise due care in presenting the two demand drafts for collection to PNB. There is no proximate connection between the opening of the account or the deposits of the forged instruments so as to treat the said events as intimately associated with each other. There is no undue hurry shown by the fraudster in making the withdrawals. It is not the case of PNB that the forgery could have been detected by the collecting bank from the face of the instruments. The fact that the forgery could not be detected by the Centralized Draft Payable Centre of PNB itself shows that the collecting bank could not have entertained any doubts as to the genuineness at the time of receiving the drafts from the customer or for making them over to the drawee bank for collection. The DRAT has found

PNB also to have been negligent in these transactions. There is reference to evidence indicating that draft forms had been lost by PNB in some incident of dacoity. With this as the backdrop, the officials at the clearing house representing the PNB would have been on guard and, thus, clearly neglected their responsibility of due scrutiny. The hurried manner in which remittances were made to the appellant bank on the same date as of the respective presentation of the two forged instruments speaks volumes as to the failure of claimant PNB to exercise appropriate standards of care.

42. It needs to be noted that the appellant bank gave credits and allowed withdrawal of the money only after receiving the credits from PNB. With no input available to the collecting bank as to the possibility of forgery, there was no reason for it to be abnormally suspicious or to question the customer as to his title to the money represented by the demand drafts. In receiving the demand drafts from the customer and in presenting it to the bank on which they purported to have been drawn, it was only acting in the course of its banking business as the agent for such customer. In absence of any nexus between the two stages of the process, negligence cannot be attributed to the appellant in the context of collection of the money against the forged instrument only on the basis of the fact that there had been negligence on its part in allowing the account to be opened.

43. In the result, we are of the view that the petitioner bank has been wrongly denied the benefit of immunity as a collecting banker under Section 131 of the Negotiable Instruments Act. We find the conclusions reached by the two authorities below on the question of complicity of the petitioner bank in wrongful loss suffered by the first respondent to be perverse. The findings to such effect rendered by the two forums below, and the liability

fastened on the petitioner in wake thereof are manifestly erroneous and, thus, liable to be set aside. We order accordingly. Needless to add that the DRT shall appropriately rectify the recovery certificate in light of this result.

44. Before we part, we must add that the authorities below have failed to take note of the fact that there is a possibility of part of the loss suffered by the first respondent being made good from out of the outstanding balance in the bank account opened by the second respondent with the petitioner bank on the basis of fake identity. The said account was frozen, upon intimation of the forgery, on 27.12.2001. As per the material on record, on the date of the account being frozen, there was an outstanding balance of ₹1,96,351/- lying therein. The said amount would have earned interest over the period. The said money forms part of the money wrongfully obtained in the said account. It rightfully belongs to the first respondent. The bank is directed to remit the outstanding balance in the said account (inclusive of up-to-date interest) to the first respondent forthwith, under intimation to the DRT (and Recovery Officer).

45. The writ petition is disposed of in above terms.

**R.K.GAUBA**  
(JUDGE)

**S. RAVINDRA BHAT**  
(JUDGE)

**MARCH 20, 2015**

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