

**HIGH COURT OF CHHATTISGARH, BILASPUR****FA No. 278 of 1998**

1. J.M.A. Stores (P.) Ltd. Head Office Post Box No.31, Jamshedpure (Bihar).
2. J.M.A. Stores (P.) Ltd., Magarpara Road, Jarhabhatha, Bilaspur, Tahsil & District, Bilaspur (M.P.) (now C.G.)

**---- Appellants****Versus**

1. Punjab National Bank constituted under the Banking Companies (Transfer of acquisition & undertakings) Act, 1970, Head Office at Bhikaji Complex, New Delhi, Branch Office at Sadar Bazar, Bilaspur (M.P.) (Now C.G.)
2. Ramesh Kumar S/o Shri Suraj Singh r/o M.I.G. 10- Kankar Post Lohiya Nagar, Patna
3. Allahabad Bank constituted under the Banking Companies (Transfer of Acquisition undertakings) Act, 1970, Head Office at Netaji Subhash Road, Calcutta and Branch Office at Bilaspur (M.P.) (now C.G.)

**---- Respondents**


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|---------------------|---|-------------------------------------------------------------|
| For Appellant       | : | Mr. Rajeev Shrivastava, Advocate                            |
| For Respondent No.1 | : | Dr. N.K. Shukla, Sr. Adv. With Shri Vikram Sharma, Advocate |
| For Respondent No.3 | : | Mr. Saleem Kazi, Advocate                                   |

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**Hon'ble Shri Justice Goutam Bhaduri****CAV Judgment****(Reserved on 17.09.2018)****(Delivered on 11.10.2018)**

1. The instant appeal is against the judgment and decree dated 15.04.1998 passed in civil suit No.11B/96 whereby a judgment and decree has been passed for Rs.4,49,853 along with an interest @ 21% p.a. from 30.11.1992.

2. The brief facts of this case are that a suit was filed by the Punjab National Bank against respondent No.1 Ramesh Kumar, respondent No.2 J.M.A. Stores Pvt. Ltd., J.M.A. Stores Pvt. Ltd. Magarpara Road, Jarahabhatha and Allahabad Bank, on the ground that the defendant No.1 Ramesh Kumar in order to purchase a Tata Chasis Truck had deposited a draft of Punjab National Bank of Rs.3,49,062/- in favour of J.M.A. Stores Pvt. Ltd. (defendants No.2 & 3). The said draft was purported to be issued by Punjab National Bank, Dhaniyawa Branch, district Patna (Bihar). The defendants No.2 & 3 J.M.A. Stores Pvt. Ltd. & J.M.A. Stores Pvt. Ltd. Magarpara Road, Jarahabhatha were dealing in sale of the different vehicles. Pursuant thereto when the defendant No.1 Ramesh Kumar deposited the draft, the same was in turn deposited by the dealer of the truck defendants No.2 & 3 with their banker Allahabad Bank. Allahabad Bank in turn sent it for clearance to the plaintiff bank i.e. Punjab National Bank, Bilaspur as the draft was issued by the Punjab National Bank of Dhaniyawa Branch, District Patna. The branch at Bilaspur cleared the amount and deposited the amount of Rs.3,49,062/- and credited the amount to the account of the dealer.
3. It was further the case of the plaintiff Punjab National Bank that after clearance of the amount, the payee bank in turn sent the intimation to the Punjab National Bank, Dhaniyawa Branch on 12.07.1991. On 2<sup>nd</sup> of August, 1991 they received an information from Dhaniyawa Branch, wherein it was informed that the said demand draft bearing No.PQW 261399 dated 08.07.1991 (Ex. P-2) was not issued by the said Branch. It was informed that the said draft book was lost/stolen from the Branch and the alleged draft was prepared by forgery. Subsequent enquiry conducted by the Branch revealed that the person Ramesh

Kumar (defendant NO.1) had received the chasis of the truck had deposited the said draft for purchase of vehicle.

4. It was the further case of the plaintiff branch that information about the missing of the draft book was circulated by the head office of the Punjab National Bank, which too was also informed by the Punjab National Bank, Dhaniyawa Branch to the plaintiff bank of Bilaspur. The plaintiff pleaded that the said drafts were forged and as such were not the legal documents. Consequently, the beneficiary J.M.A. Stores were not entitled to receive the said amount from the Bank. The report was made to the police and eventually a suit was filed by Bank for an amount of Rs.4,49,853/- from the date of payment on 12.07.1991 till 29.11.1992 and the interest @ 21 % were claimed. So the principal sum of of Rs.3,49,062/- and interest of Rs.1,00,791/- was claimed, total amounting to Rs.4,49,853/-
5. The appellant/defendant herein J.M.A. Stores contended that they were the bona fide holders in due course of the draft as the draft was received in lieu of the delivery made of new diesel truck to the defendant No.1 Ramesh Kumar. It was stated that the draft having been received, it was deposited in the account of Allahabad Bank and Allahaband Bank in turn when sent it for clearance to the Punjab National Bank for payment after due verification and the Punjab National Bank has cleared the amount of draft. It was stated, therefore, that the entire responsibility of payment that was of the Punjab National Bank and even if the alleged draft was stolen and the bank was having the knowledge they could have denied the payment and in such case the delivery of the vehicle

would not have been made. It was further stated that because of the negligence of the bank officers without verification of the authenticity of the draft and despite having received the information that the said alleged draft book was stolen clearance was made which resulted in delivery of vehicle. It was further stated that since the said clearance was made by the Bank officers they should have also been made a party and the plaintiff was not entitled to receive any amount from this respondent.

6. The respondent No.4 Allahabad Bank with whom the draft was deposited by the defendant/appellant, the seller of the truck, contended that the said draft having been sent for clearance, the clearance having been made, the amount was credited to the account of seller of the truck. It was stated that the Allahabad Bank has wrongly been made a party and no liability can be attributed.
7. The trial Court on the basis of the pleading framed as many as 9 issues and it was held that the plaintiff Punjab National Bank was entitled to receive the amount and decree of Rs.4,49,853/- was passed with further interest of 21% p.a. from 30.11.1992 till the date of realization and further cost of the suit was also allowed. Hence this appeal.
8. Mr. Rajeev Shrivastava, learned counsel for the appellant J.M.A. Stores Pvt. Ltd., supplier/seller of the vehicle, would submit that Ramesh Kumar, who was the purchaser of the vehicle had deposited the said draft of Rs.34,49,062/- dated 08.07.1991 with them. The said draft was deposited in the account of the Allahabad Bank, and the draft in turn was sent for clearance. He further submits that according to the pleading, the plaintiff contended that they are the

holder in due course and initial holder of the draft was defendant No.1. He further submits that, therefore, the appellant being the holder in due course, the payment was made to him which is covered by Section 9 of the Negotiable Instruments Act, 1881 (for short the N.I. Act, 1881). It is further contended that it is the pleading of the plaintiff that circular to the effect that the said draft book was stolen was with the Bank which was circulated through the head office, despite that the Bank ignored the same and made the payment for which the supplier of the vehicle the appellant herein cannot be held liable. He further submits that the interpretation made by the Court below that by Section 58 of the N.I. Act cannot be applied as the appellant was holder in due course. Reference is made to the case law of ***Pranendu Mohan Das Versus Central Bank of India (AIR 1978 Cal 55)*** and would submit that the payment was made with the apparent tenor of the instrument which was without any doubt as such it cannot be stated that the appellant was not entitled to receive the payment. Further the reliance is placed in the case of ***Sukanraj Khimraja, a firm of merchants, Bombay and another v. N. Rajagopalan and others {[1989] 1 LW 401}***, and submits that there was no knowledge of fact that the said draft was forged, therefore, the liability cannot be fastened over the appellants. As such the trial Court has completely erred by fastening the liability.

9. Dr. N.K. Shukla, learned senior counsel assisted by Shri Vikram Sharma, learned counsel for respondent No.1 submits that in this case the forged demand draft was sent through the collection by the Allahabad Bank. It is stated that the demand draft being the outcome of a fraud, it was not at all an negotiable instrument, therefore, the original holder cannot be covered within

the definition of Section 8 of the N.I. Act consequently appellant would not be the holder in due course under Section 9 of the N.I. Act. It is further contended that the categorical pleading of the respondent would show that they have pleaded & proved that the bank draft was never issued by the Punjab National Bank for consideration. It is further submitted that few draft papers were stolen from Dhaniyawa Branch at Patna Bihar, which was used at Bilaspur and the demand draft was sent through the collection through Allahabad Bank, therefore, the original holder Ramesh Kumar, received the vehicle on the basis of the demand draft. It is stated in case of non-payment of said demand draft the bank could not have been sued. He further submits that that being the legal position, even if it is assumed for the sake of arguments that the appellants were the holder in due course, he could not have sued for recovery of the money. Reference is made to Section 8 & Section 9 of the N.I. Act and submits that as per Section 58 of the N.I. Act, unless the instrument is negotiable, the same cannot be pressed for payment. It is further submitted that when forgery exists then the burden shifts on the person who claims it to be genuine and was holder in due course as per Section 118 of the N.I. Act. It is submitted that the order of the Court below is well merited which do not call for any interference.

10. Heard learned counsel for the parties and perused the evidence.

11. To appreciate the evidence it would be necessary to quote the Section 8 & 9 of the Negotiable Instruments Act, 1881, which reads as under:-

**8. "Holder".** - The "holder" of a promissory note, bill of exchange or cheque means any person entitled in his own name to the possession thereof and to receive or recover the amount due thereon from the parties thereto.

Whether the note, bill or cheque is lost or destroyed, its holder is the person so entitled at the time of such loss or destruction.

**9. “Holder in due course”.** - “Holder in due course” means any person who for consideration became the possessor or a promissory note, bill of exchange or cheque if payable to bearer or the payee or indorsee thereof, if payable to order, before the amount mentioned in it became payable, and without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title.

12. Reading of Section 8 & 9 of the N.I. Act together and the principles when are translated in the facts of this case would show that the respondent Ramesh Kumar placed a draft with the appellant which was routed through for collection by the bank of appellant namely Allahabad Bank to the Punjab National Bank on whom the draft was drawn. Section 9 of the N.I. Act does not use the word good faith. It provides that the holder should have received the instrument without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title. Only, therefore, to defeat the title of a holder for value, the evidence must be on record that when he took the instrument he had cause to believe that there was something wrong in the instrument. Cause to believe denotes the different reasons means the suspicion in the kind of some illegality effecting the instrument. Therefore, the Court has to sit in the arm chair of the holder to read the mind if certain aberrations or factual aspect come to fore or doubt is created that there is defect in the instrument and despite having known he remained dormant. As such Section 9 of the N.I. Act would lead to a subjective test of good faith, which can be adjudged with the act of the holder.
13. Plain reading of Section 9 do not say so that the Court has to go beyond the holders mind and see the care and caution in such eventuality bill of exchange

may lose its efficacy at the whims of the person with whom it is negotiated.

14. In the aforesaid background when the evidence of plaintiff witness J. Ekka (PW-1) is examined he has proved the draft (Ex. P-2). Perusal of Ex. P-2, the draft of Rs.349062/- shows that it bears the signature of the Manager with the code no. and below it the signature of the accountant also exists. Even the different marking and other endorsements are on it with the specific numbers in code. On prima facie inspection it do not show to be fake. The cross-examination of J.Ekka would show that at the relevant time when the draft was negotiated, he was working in the Branch as an Officer. He has deposed that demand draft (Ex. P-2) was issued from Punjab National Bank, Dhaniyawa Branch and the said document was alleged to be have been stolen. In the cross-examination he has stated that on 12.07.1991 the alleged draft Ex. P-2 was received and the payment was made. He further deposed that Ex. P-2 bears whose signature he cannot say along with the fact that who had issued the same. The witness further deposed that the said draft was send from the Allahabad Bank . Most importantly he admitted the fact that the draft was found to be correct. It is stated therefore, the payment was made and after that the draft for clearing was sent to Dhaniyawa Branch of Punjab National Bank.
15. The deposition to the effect that the draft should have contained the signature of the responsible officer is an opinion of the witness and the witness himself is unaware as to who's signature was there in the draft. The witness further deposed that the said draft was sent for clearance by letter, but the letter was neither produced in the Court nor was brought at the time of evidence. He further deposed that in the draft Ex. P-2 name of respondent No.1, who alleged

to have forged the draft namely Ramesh Kumar was not written. Again the witness has deposed that he did not get the draft verified from Dhaniyawa Branch, Patna, Bihar or got the signature examined by any expert. The plaintiff witness, therefore, has advanced the entire case only on the basis of the presumption that the draft was fake as same was alleged to be lost. It is also not clear wherefrom the name of Ramesh Kumar surfaced. It was for the Bank to prove with admissible evidence that the draft was fake. No presumption can be drawn that the signature on the draft were fake or they were not that of any branch official as the witness categorically stated that the signatures on the draft were not got verified from Dhaniyawa Branch of the Punjab National Bank. It is completely vague and suspicious circumstance that as to who received the forged draft as there is no iota of evidence in this regard in the file. Whether the bank officials itself were holding the draft and have negotiated thereafter the story of innocence is projected? In order to prove the draft was fake, necessary evidence should have brought on record by the Bank by calling the necessary officer of Dhaniyawa Branch, Punjab National Bank at the relevant time.

16. The witness of the defendant/appellant P.C. Das (DW-1) has stated that one Ramesh Kumar had come with a draft of Rs.349062/- for purchase of a Tata vehicle and after receiving the draft, the receipts were issued and the draft was deposited in the Allahabad Bank and after the demand draft was sent for clearance and the money came to their account, the vehicle was delivered to defendant No.1. This implies if the payment by clearance would not have been made the delivery of the vehicle would not have taken place.
17. Section 9 of the N.I. Act do not intend to bar the claim of a holder only on

account of his negligence. Otherwise the expression as has been used in Section 10 of N.I. Act in defining the payment in due course word good faith has been used would have found place. Therefore, if a person honestly takes an instrument believing that the bearer has a good title, unless the gross negligence comes to fore, to find out any contemplated fraud a person cannot be denied of his right. There would be two methods of ascertaining the intention of the party to the instrument, one would be subjective and the other would be objective. Subjective test requires honesty and objective due care and caution. In the subjective test the Court has to see the holders own mind and the only question is did he take the instrument honestly in the objective test on the other hand, the Court has to go beyond the holders mind and see whether much care was taken as a reasonable person ought to have been taken.

18. The evidence in this case would show that when the draft was given to the seller, the Tata Engineering they deposited in the account and bare perusal of the draft do not show that any defect exist rather the small entries and intricacies of code is making a mark exist in the draft. As such, the appellant cannot be said to be were not holder in due course to receive the money.
19. Further J. Ekka (PW-1) has deposed that the alleged draft (Ex. P-2) when was sent for negotiation to the Dhaniyawa Branch of Punjab National Bank, they received a letter by 01.08.1991 that no such draft was issued by such Punjab National Bank, Dhaniyawa Branch. It further reported that the said draft was either stolen or lost from the security documents as per Ex- P-3. The plaintiff witness further deposed that from the head office of the Bank in January, 1990

circulars were issued of lost of such draft by Ex. P-4. Perusal of Ex. P-4 dated 01.01.1990 shows that the banks were informed that certain numbers of draft were missing, the alleged draft in this case was 261399, which is tallied with the series of missing security forms.

20. The witness PW-1 further stated that the letter from the Punjab National Bank, Dhaniyawa Branch was received by 02.08.1991 (Ex. P-5). The witness in cross-examination has further deposed that at the time of payment of the draft (Ex. P-2) the circular of the intimation of the lost of security documents was in the bank and Ex. P-3 circular was not brought to anybody's notice and after the draft was paid, the circular was searched and was found. The circumstances, therefore, speaks for itself that it is not clear as to whether officials of the bank despite knowing of the fact allowed the payment. It can be looked into from the other angle that despite the existing circular which was in the bank, the bank officials negotiated such draft and for the negligence of the branch officials, the bank a body corporate suffered the loss. Therefore, the bank as a body corporate for the negligence of its officers, who did not discharge their duties properly cannot be allowed to recover the amount from the holder in due course i.e. the appellant. It is not a case that the draft though was negotiated and the payment was withheld to the appellant on the ground that it was outcome of fraud, but instead the amount was paid by the bank with all smile and thereafter instead of catching hold of their officers who negligently paid the same, the recovery suit was filed to cover up their own wrong from the appellant as also the person namely Ramesh Kumar. Therefore, the bank cannot be allowed to take advantage of their own wrong and pass the bucks to others as the buck

stopped at the Bank.

21. After overall appreciation of evidence, on record, the appellant will be protected and enveloped by virtue of Section 9 of the N.I. Act as the Act itself permits payment of the draft to the holder in due course. In view of the discussion herein above it is held that the appellants are holder in due course and amount received by them cannot said to be illegal. The recovery suit against the appellants, therefore, cannot be pursued to put a veil of own negligence of the Bank. Accordingly, the judgment and decree passed against appellants, who were defendants No.2 & 3 before the Court below, cannot be sustained. In a result, the appeal is allowed and the judgment and decree of the Court below is set aside.

Sd/-

Goutam Bhaduri  
Judge

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