IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.01.2019

CORAM :

THE HON'BLE MRS.V.K.TAHILRAMANI, CHIEF JUSTICE

AND

The HON'BLE MR.JUSTICE M.DURAISWAMY

W.P.No.24964 of 2018 and
W.M.P.No.29007 of 2018

Standard Chartered Bank,
Raheja Towers, M.G.Road,
Bangalore - 560 001
having its Branch Office at
19, Rajaji Salai,
Parrys, Chennai - 600 001.
rep by its Authorized Signatory G.V.Bharathy ... Petitioner

Vs.

1.Punjab National Bank,
Regional Collection Centre,
At India Mutual Building, N.R.Square,
Bangalore - 560 002.

2.Harish Kumar ... Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of certiorari to call for the records on the file of the Debt Recovery Appellate Tribunal relating to the impugned order dated 12.03.2018 in R.A.No.17 of 2009 and to quash the same

For Petitioner : Mr.M.S.Murali
for M/s.R and P Partners

For Respondents: Mr.M.L.Ganesh (R1)
R2 - given up
vide order dated 23.01.2019

O R D E R

(Order of the Court made by M.DURAISWAMY,J.)

The petitioner has filed the Writ Petition to issue a Writ of certiorari to call for the records on the file of the Debt

Recovery Appellate Tribunal relating to the impugned order dated 12.03.2018 in R.A.No.17 of 2009 and to quash the same.

2.It is the case of the petitioner that the 2nd respondent opened a Savings Bank Account in the petitioner – Bank on 06.05.2002 based on the Driving License as his identity proof. Soon after the opening of the account, the 2nd respondent deposited four Demand Drafts, totally for a sum of Rs.24,69,970/- with the petitioner – Bank.

3.The 1st respondent – Bank contended that the 2nd respondent had stolen 50 leaves of Demand Drafts from one of their Banks in Punjab and the 2nd respondent purchased Drafts for smaller amounts from the 1st respondent – Bank at various places. Thereafter, by forging the signature, deposited the Demand Drafts with the petitioner – Bank. It is also the case of the 1st respondent that the 2nd respondent had also chemically altered the name of the Branch and also printed the Serial Numbers on the stolen Drafts and substituted them with the Branch Name and printed Serial Number available on the Demand Drafts actually purchased for smaller amounts and filled up larger figures on the stolen Drafts. The 2nd respondent also withdrew the sum of Rs.24,69,970/- and has not repaid the said amount. The 1st respondent – Bank contended that since the amounts were withdrawn through the petitioner – Bank, the petitioner – Bank is also liable to compensate the 1st respondent – Bank. In these circumstances, the 1st respondent – Bank filed an application in O.A.No.412 of 2003 on the file of the Debts Recovery Tribunal, Bangalore claiming a sum of Rs.30,23,040/-.

4.The petitioner – Bank contended that the 1st respondent slept over the matter for a long time and lodged a police complaint only in the month of August 2002. The petitioner – Bank contended that it is only because of the negligence and irresponsible conduction of business by the 1st respondent – Bank, the 2nd respondent had committed fraud and withdrew a sum of Rs.24,69,970/-, by using stolen Demand Drafts, which were in the custody of the 1st respondent – Bank. Even the witness examined on the side of the 1st respondent – Bank was not in a position to establish that the petitioner – Bank was at wrong.

5.The Debts Recovery Tribunal, after carefully examining the oral and documentary evidence putforth by the 1st respondent – Bank, found that there are no laches committed by the petitioner – Bank in the discharge of its duties, whereas the 1st respondent – Bank is liable for all losses.

6.When the witness examined on the side of the 1st respondent – Bank failed to establish the case of the 1st respondent as against the petitioner – Bank in an acceptable manner, the Debts Recovery Tribunal allowed the O.A. directing the 2nd respondent to pay Rs.30,23,040/- along with costs and interest. Since the 1st respondent failed to establish that the petitioner - Bank had committed the wrong, no decree was passed against the petitioner - Bank. However, in the appeal in R.A.No.17 of 2009 on the file of the Debt Recovery Appellate Tribunal, Chennai preferred by the 1st respondent - Bank, even in the absence of any acceptable evidence produced by the 1st respondent - Bank to the effect that the petitioner - Bank had committed the wrong, the Debt Recovery Appellate Tribunal, Chennai allowed the appeal in part, by fastening 50% liability on the petitioner - Bank.

7.While modifying the order passed by the Debts Recovery Tribunal, the Appellate Tribunal observed that the petitioner - Bank has not followed the KYC norms and therefore, the petitioner - Bank is also liable to pay the amount. When the 1st respondent - Bank was negligent in preserving the blank Demand Drafts, no liability can be fastened on the petitioner - Bank. Only because of the negligence on the part of the 1st respondent - Bank, the 2nd respondent stole 50 leaves of blank Demand Drafts and fraudulently encashed them by depositing the same with the petitioner - Bank. Had the 1st respondent - Bank was careful and diligent, the offence could not have been committed by the 2nd respondent. Therefore, for the fault of the 1st respondent - Bank, the petitioner - Bank cannot be penalized.

8.The learned counsel appearing for the petitioner relied upon the judgment reported in (2004) 2 SCC 425 [The Kerala State Co-operative Marketing Federation Vs. State Bank of India and Ors.], wherein the Hon'ble Supreme Court held as follows:

> "...
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> 11.One of the tests of deciding whether the bank was negligent, though not always conclusive, is to see whether the Rules or instructions of the banks were followed or not. We may accordingly consult those instructions. Ex.B-6 contains the general instructions regarding constituent accounts for bank. Mark II deals with opening (sic) of accounts. It says:
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> > "Except at large branches where the sub-agent or accountant may be authorized to open Current Accounts, no new Current Account shall be opened without the authority of the agent manager who is solely responsible for all Current Accounts being opened in the proper manner. A written application on the appropriate form (sic) must be submitted and will be initialled by the agent at the top left corner after he has satisfied himself of the respectability of the applicant(s). It is important that every party must be introduced to the Bank by a respectable person known to the Bank, who must normally call at the Bank and sign in the column

specially provided for the purpose in the account opening form. In all cases his signature must be verified with the specimen lodged and attested. The agent of accountant may introduce constituents to the Bank provided they are known to him personally and in such cases he should sign the application form (sic) at the appropriate place in his personal capacity. When the introduction of any other member of the staff is accepted, the agent must invariably make independent inquiry and record his findings on the account opening form for future reference if the need arises ...""

8.1.Following the ratio laid down by the Apex Court in the judgment reported in (2004) 2 SCC 425, the Division Bench of Delhi High Court in the judgment reported in 2015 SCC Online Del 8287 [Axis Bank Vs. Punjab National Bank & Anr.] held as follows:

"...

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 (sic) 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.

...

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 at 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 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 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.”

9.The ratio laid down in the judgments relied upon by the learned counsel for the petitioner applies to the facts and circumstances of the present case.

10.In these circumstances, we are of the considered view that the petitioner - Bank is not liable to pay any amount for the fault committed by the 1st respondent - Bank. However, the 1st respondent - Bank is at liberty to recover the amount from the 2nd respondent in accordance with law.

11.For the reasons stated above, the order passed by the Debt Recovery Appellate Tribunal, Chennai in R.A.No.17 of 2009 is set aside and the order passed by the Debts Recovery Tribunal, Bangalore in O.A.No.412 of 2003 is restored. The Writ

Petition is allowed. No costs. Consequently, the connected miscellaneous petition is closed.

-s/d-
Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

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To

1.Punjab National Bank,
Regional Collection Centre,
At India Mutual Building, N.R.Square,
Bangalore - 560 002.

+1 CC to M/s.R & P Partners sr 5286.
+1 CC to Mr.M.C.Ganesh, Advocate sr 5713.

W.P.No.24964 of 2018 and
W.M.P.No.29007 of 2018

KAN(CO)
SP(08/03/2019)