

Officer Commanding Vs. State Bank of India and anr.

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Court : Jammu and Kashmir

Decided On : Dec-31-2002

Reported in : 2003(1)JKJ719

Judge : T.S. Doabia and S.K. Gupta, JJ.

Acts : Code of Civil Procedure (CPC)

Appeal No. : LPA (C) No. 09/2000

Appellant : Officer Commanding

Respondent : State Bank of India and anr.

Advocate for Def. : M.P. Gupta, Adv.

Advocate for Pet/Ap. : P.S. Chandel, Adv.

Disposition : Appeal allowed

Judgement :

Doabia, J.

1. The Officer Commanding, 173 Field Regiment, C/o 56 APO was maintaining an imprest account No. 9419 with the State Bank of India, main branch, Jammu. This account used to be operated by the Adjutant of the Unit and for the operation of this account, every cheque which was presented to the Bank for encashment, was

required to be counter-signed by the Commanding Officer and Adjutant of the Unit. It appears that a cheque amounting to Rs. 2,25,000/-, was presented with the State Bank of India, respondent. No. 1, (hereinafter referred to as the Bank) by PV Brahamchari, GNR/Clerk. This cheque was got encashed. It is under these circumstances a suit for recovery came to be filed, It was submitted that the said cheque should not have been encashed. It was, stated that for operation of the account, two specimen signatures one of the Officer Commanding of the Unit and the other of the Adjutant of the Unit were made available to the bank. It was submitted that the cheque which was got encashed bore the signatures of Lt. Col. R.K. Sharma, whose specimen signatures were not available with the bank. It was submitted that the cheque was not properly issued and it should not have been encashed by the bank. The further plea taken was that defendant No. 2 was an employee of the Unit which was being looked after by the appellant. It was stated that this defendant stole one cheque leaf from the cheque book and got the same encashed after forging the signatures of Officer Commanding namely Lt. Col. R.K. Sharma and the adjutant of the unit namely Capt. Harminder Singh, in violation of the authority which was made available to him. It was submitted that the cheque which should not have been encashed has been encashed, and therefore, a civil wrong has been committed, and therefore, the bank is liable to pay a sum of Rs. 2,25,000/- to the appellant. It was in these circumstances, as indicated above, a suit for recovery came to be filed. It was pleaded that the bank was negligent and careless in the discharge of duties.

2. The Bank in its written statement stated that the suit has not been properly filed in as much as the plaintiff appellant is not a legal person. It was pleaded that the suit was not properly verified in terms of Order 6 Rule 15 of the Code of Civil Procedure. The further technical plea taken was that the suit could be filed only after arraying. The State Bank of India, Central Office, Bombay, as a party to the suit.

3. On merits, it is was stated by the Bank that a cheque was presented by an employee of the appellant namely P.V. Brahmchari ; he was in uniform. It was admitted that the account was to be operated jointly by the Officer Commanding and the Adjutant of the Unit. It was pleaded that the account was, infact, to be

operated jointly by Capt. Harminder Singh and Lt. Col. R.K. Sharma. It was submitted that the cheque in question was presented on 1st April' 77 for encashment by aforesaid P. V. Bramchari. It contained Signatures of Harminder Singh and Lt.Col. R.K. Sharma. It was submitted that these Signatures tallied with the specimen Signatures on record. It was stated that the signatures of P.V. Brahmchari were also taken at the counter. The cheque, it was stated, was encashed in the ordinary course of business; due diligence was exercised. It was stated that it was the plaintiff appellant who was remiss and that it did not take all precautions and abide by the instructions. It was Stated that had the cheque issuing authority been vigilant and informed that Bank about the missing of the cheque, then the payment could have been stopped.

4. The trial court while dealing with the matter framed as many as 9 issues, The issue No. 7 and 8 are relevant; these read as under:-

'7. Was cheque No. OA/15 160433 dated 01-04-77 presented to it by defendant No. 2 and encashed by def. No.1 without taking due precautions and making due verification of the signatures of the Adjutant and Officer Commanding of the Unit appearing on it? If so what is its, effect on the suit? OPP.

8. In case the plaintiff is found entitled to recover the amount of the cheque from defendant, No. 1, is the latter liable to pay interest on the cheque amount from the date it was encashed? OPP'.

5. A finding was recorded on these issues. Issue No. 7 Came to decided in favour of the appellant and so far as issue No. 8 is concerned, a finding was recorded that the appellant is not entitled to any interest on the amount of Rs. 2,25,000/- It was concluded that the bank had made payment to Sh. P.V. Brahmchari on a forged cheque and this would not be a valid discharge. Accordingly, the judgement was went in favour of the appellant plaintiff.

6. It was against the above decision, an appeal was preferred by the respondent Bank. This stands allowed. Now the present appeal has been preferred under Clause 12 of the Letters Patent.

7. What is sought to be urged in this appeal is that if cheque No. OA/15-160433 which has been got encashed by respondent No. 2 is taken note of, then it becomes apparent:

i/ That the signatures of Commanding Officer and of the Imprest holder exist on the front of the cheque but a perusal of the signatures on the back of the cheque where the authority in favour of P.V. Brahmchari exists, would show that these signatures are quite different;

8. In support of the above assertion, another cheque bearing No. OA/15-160439 was placed on the record. This cheque bears the signatures of Commanding Officer and also of the Imprest Holder Capt. Harminder Singh. On the reverse of it, there is a verification of the signatures of the person who is supposed to get the cheque encashed. For facility of reference, it would be apt. to take notice of the contents of these cheques. A photostate copy of these is as under:

9. The aforementioned exercise has been taken with a view to show that a bare persual of the signatures of Lt. Col. R.K. Sharma and Capt. Harminder Singh, on the front and also on the back of cheque No. OA/15-160443 i.e. the cheque in dispute, are different. These do not tally with the signatures of the said officers which are there on cheque No. OA/15-160439. Therefore, the conclusion arrived at by the trial court that this was a case where the first cheque which was presented by defendant No. 2 (P.V. Brahmchari) was a forged cheque is a conclusion to which no exception can be taken.

10. The Statement of one major P.A. Peter, who was supposed to get the payment of second cheque bearing No. OA/15-160439 be also examined.

11. He stated that on cheque No. OA/ 15-160433, the signatures of the Commanding Officer Lt. Col. R.K. Sharma and Adjutant Capt. Harminder Singh are forged. This officer was cross-examined. He pointed out the difference between the hand-writing in which Lt. Col. R.K. Sharma used to sign and the signatures which existed on Exhibit EXPR/ 1. The relevant portion of the statement made in this regard is reproduced below :-

'.....I saw that cheque No. 160433 is forged one because it does not bear the signatures of my C.O.I can not descifer the signatures of my officer Commanding either on the forged cheque. I can read the letter 'R.K. Sharma' on EXPW1/1. In the forced cheque R.K. Sharma has been written. The difference between the two is that I was holding the genuine cheque and other is forged one. There is difference of appearance of signatures. The letter 'R' in the forged cheque is different from letter 'R' on the genuine cheque. The letter 'R' in forged Cheque is more bigger than the original cheque. My officer Commanding could write 'R.K.S.' in bigger size also.....'

12. The trial court was of he opinion that in order that there is a valid discharge, the negotiable instrument which is presented should be a genuine document. The relevant portion of the observations made by the trial court with regard to the dissimilarities is being reproduced below :-

'.....The curves and the dots as are generally found in the forged signatures can apparently be seen in the disputed signatures. There is clear dis-similarity in the words Lt. & CL. in the signature of Lt. Col. R.K. Sharma. In the signature of Capt. Harminder Singh also there is apparent dis-similarity in the words 'S' 'M' and 'g'....'.

13. The learned Single Judge while dealing with the matter, at page 4 of its judgement has reproduced only the opening paragraph from page 24 of its judgement given by the trial court and has not taken note of the reasoning which has been given by the trial court in coming to the conclusion that the cheque No. OA/15-160433 which was presented was a forged document. Thus, so far as factual position is concerned, a finding of fact was recorded by the trial court, which as indicated above was to the effect that the cheque in question was a forged cheque. We are of the opinion that this finding recorded by the trial court has not been reversed by the learned Single Judge. Whatever conclusion has been drawn was by taking note of only apart of reasoning given by the trial court whereas, the remaining part has not been adverted to at all. All that has been stated is that Maj. P.A. Peter, who appeared in the witness box was not familiar with the signatures of R.K. Sharma, and therefore, the opinion given by him would not be such which would fall within the meaning of Section 45 of the Evidence Act.

As indicated above, the reasoning given by the trial court in the remaining paragraph was not adverted to and was not reversed. We have otherwise taken note of the two cheques i.e. cheque No. OA-15/ 160433 and cheque No. OA-15/ 160439. A bare persual of cheque in dispute i.e. OA-15/160433 would indicate that the signatures of both the officers on the front of the cheque are different from the signatures which exist on the back of the cheque. Even the signatures which exist on cheque No. OA-15/160439 i.e. the later cheque which totally different from the signatures which exist on the forged cheque. Therefore, looking from any point of view, a finding has to be recorded.

(i) That the cheque No. OA-15/160433 is a forged document and finding in this regard was rightly recorded by the trial court.

(ii) That the learned Single Judge has taken note of only a part of reasoning and the remaining paragraph which dealt with the reasoning given by the trial court in arriving at a conclusion that the cheque in question was a forged document has not been adverted to and this reasoning has not been reversed by the learned Single Judge. The reasoning given by the trial is accordingly upheld.

14. The two cheques bearing No. OA/ 15-160433 and OA/15-160439 are in torn condition and are being put in a cover which is marked as C. 1. These are Ex. PW.1/1 and Ex. PR/4. These as indicated have been put in a cover so that they donot sustain further damages.

The legal position in this regard be now examined.

15. The relationship between a bank and its customer arose for consideration before the Supreme Court of India in the case reported as Bihta Co-operative Development and Cane Marketing Union Ltd and Anr. v. Bank of Bihar and Ors., AIR 1967 SC 389, In the above case, a suit was filed by the Society for illegal withdrawal of Rs. 11000/- from the bank. The suit was decreed by the trial court and affirmed by the High Court. The case then came before the Supreme Court of India. The plea taken by the bank was that if the customer chooses to dispense with the ordinary precautions and permits a forgery to be committed and if owing to the negligence of such precautions, it is put into the power of any dishonest

person to increase the amount by forgery, the customer must bear the loss. For this argument, reliance, was placed on a decision of House of Lords given in the case of *London Joint Stock Bank Ltd v. Macmillan and Arthur*, 1918 AC 777. The Supreme Court of India was, however, of the opinion that what was said in *Macmillan's* case above would not be applicable because the accepted principle of law that if signature on the cheque is genuine and there is a mandate by the customer to pay then the banker has no obligation but to discharge the liability but if the signatures on the cheque or at least one of the signature is not genuine, then there is no mandate on the part of customer to pay and there would no question of any negligence on the part of the customer, such as, Waving the cheque book carelessly so that a third party would easily get hold of it would afford no defence to the Bank. The ratio of decision given in *Bihta Cooperative's* case (*supra*) stands approved in the later decision reported as AIR 1987 SC 1603, *Canara Bank v. Canara Sales Corporation and Ors.* In the above case, the Chief Accounts Officer of the Company who was attending the maintenance of the company's accounts and was also in charge and custody of the cheque books forged 42 cheques for a total amount of Rs. 3,26,047.92 between 1957 and 1961. The bank contended that the customer was estopped from claiming the amounts by reason of its own negligence on account of its acquiescence in and ratification of, the payments made by the bank as the customer was being supplied by the bank monthly statement of accounts and half yearly accounts over a period of four years & he had to raised any objection at the appropriate time to the correctness of the accounts. The supreme Court of India observed that when a cheque duly signed by a customer is presented before a bank, it carries a mandate to the Bank to pay, If a cheque is forged, then there is no such mandate. The bank can escape liability only if it can established knowledge to the customer of the forgery in the cheques. In action for a continuously long period cannot by itself after a satisfactory ground for the bank to escape its liability. The customer in the above case swung into action immediately on the discovery of the fraud committed by its accountant. The Supreme Court of India observed that there is no duty for a customer to inform the bank about the fraud committed on him of which he was unaware. There is a duty of the customer to inform the bank of irregularities when he comes to know of them. He can be estopped when he remained silent even after knowing the truth of

matter. The Supreme Court of India in the above case took note of the decision given in the case of the *Tai Hing Cotton Mills Ltd. v. Liu Chong Bank Ltd.* (1985) 3 WLR 317 : (1985) 2 All ER 947 (PC). In *Babulal Agarwalla v. State Bank of India, Bikaner and Jaipur*, (1988) 64 Comp. Cas. 461, the Calcutta High Court, followed the view expressed by the Supreme Court of India in *Canara Bank's* case (supra). The Calcutta High Court held that the mandate of the customer to bank to pay the cheque signed by him for the bearer, which is statutorily recognised by Section 85(2) of the Negotiable Instruments Act, ceases as soon as it is proved that the cheque paid by the bank was a forged one because a forged cheque is no cheque issued by the customer. There is no mandate of the customer to the bank to pay on such a forged cheque. Therefore, the protection given to the bank by Section 85 is not available to the bank in respect of a forged cheque. The bank is not liable to debit the said amount of the cheque even if it is found that the customer did not take proper care to keep the cheque or the relevant cheque book in proper custody. It was held that the bank cannot avoid the liability by merely proving that it made payment in due course according to the apparent tenor of the cheque or by verifying the signatures in the cheque with the specimen signature and finding no apparent discrepancy. It was observed that the bank can avoid the liability only if it can prove that there was ratification or estoppel.

16. As a matter of fact in an earlier decision given by the Allahabad High Court reported a AIR 1938 Allahabad 374, *L. Pirbhu Dayal v. The Jwala Bank*, the cheque book was allowed to remain in an unlocked box. The Allahabad High Court held that negligence on the part of plaintiff was not the proximate cause of loss to the bank. It was observed that it was the duty of the employees of the bank to be able to identify the signatures of their customers and if they failed to discharge their duty and thereby suffered the loss, there is no reason why the plaintiff should make good that loss. It was observed that the loss in the above case was entirely due to the negligence of the employees of the bank is not comparing the signature on the forged cheque with the specimen signatures of the plaintiff. The Allahabad High Court in the above case placed reliance on a decision of Calcutta High Court reported as *Bhagwan Dass v. Creet*, (1903) 31 Cal 249, wherein it was held that 'When a banker makes a payment on a forged cheque, he cannot make the customer liable except on the ground of negligence imputable to the customer.'

The Allahabad High Court referred to a passage from Beven on Negligence, Edition 4, Vol. II Chap. 3 p. 1471. This is instructive and is being reproduced below-

'The banker's obligation is to honour his customer's cheque, To that end he is bound to know his customer's handwriting, If in any way he is deceived without the instrumentality of his Customer, he must himself abide the loss.'

17. The Allahabd High Court also referred to a decision of Rangoon High Court reported as AIR 1924 Rang 264, Ahmed Moola Dawood v. Firm Pereinan Chetty, in which decision it was held that the money paid by the bank under a forged cheque could not be debited to the customer merely on the ground that the customer was negligent to this extent that he allowed his cheque book to remain unlocked.'

We are accordingly of the view;

i/ That in the present case, the payment was made on a forged cheque. The forgery could be detected on a bareperusal of the hand-writing. The signatures on the face and on the reverse of the cheque are such which even with naked would give an impression that the hand-writing is shaky and the signature on the front of the cheque do not tally with the signatures on the reverse of it.

18. It appears that what led the bank officials to encash the cheque was the fact that defendant No. 2 P.V. Brahmchari was in uniform and they never took further precaution of verifying the signatures.

We are accordingly of the view:

i/ That the cheque No. OA-15/ 160433, Ex. PR/4 is forged document, which fact is visible even to naked eyes;

ii/ That the finding recorded by the trial court have not been dislodged by the learned Single judge and only apart of reasoning given by the trial court has been taken note of;

iii/ That the signatures on the front of the cheque do not tally with the signatures which exist on the reverse of it;

iv/ That the signatures on cheque No. OA-15/160433 do not tally with the signatures on cheque No. OA-15/ 160439, which as per appellant was the genuine cheque issued for withdrawal of the amount;

v/ That the bank officials were negligent in verifying the signatures which existed on the cheque with the specimen signatures available with them.

19. Once the above factual findings are recorded then the further conclusion that the bank is liable to pay would automatically ensue. The payment made on a forged cheque is no payment in the eyes of law. This appeal as such is allowed. The appellant is held entitled to recover amount of Rs. 2,25,000 alongwith interest. The rate of interest would 9% from the date, the cheque was encashed till the reverse entry is made by the State Bank of India. The appellant is also entitled to cost of litigation throughout. This would include the court fee paid by the appellant and also the counsel fee. The cost so far as counsel fee is concerned is fixed at Rs. 5000/-. The judgment passed by the learned Single Judge is accordingly set aside.

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