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**(2009) 01 AP CK 0007**  
**In the Andhra Pradesh High Court**  
**Case No : A.S. No. 1931 of 1987**

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|-----------------------------------------|----|------------|
| Canara Bank                             | Vs | APPELLANT  |
| Nalgonda Co-operative Central Bank Ltd. |    | RESPONDENT |

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**Date of Decision :** 23-01-2009

**Acts Referred:**

Negotiable Instruments Act, 1881 (NI) — Section 131, 131A, 85A

**Citation :** AIR 2009 AP 89 : (2010) 5 RCR(Criminal) 754

**Hon'ble Judges :** Sanjay Kumar, J

**Bench :** Single Bench

**Advocate :** K. Mallikarjuna Rao, for the Appellant; S. Ravindranath, for the Respondent

**Final Decision :** Dismissed

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## Judgement

Sanjay Kumar, J.—Canara Bank, Nalgonda, the defendant in the suit O.S. No. 251 of 1979 on the file of the Subordinate Judge, Nalgonda, is in appeal against the judgment and decree dated 30.06.1987 passed therein. The Court below decreed the suit holding the defendant bank liable to pay a sum of Rs. 5,71,999/- with interest and costs to the Nalgonda Co-operative Central Bank Limited, Nalgonda, the plaintiff therein.

2. For the sake of convenience the parties hereto shall be referred to as per their array before the trial Court.

3. The plaint averments are to the following effect:

The Suryapet Branch of the plaintiff bank issued two uncrossed demand drafts on 30.10.1976 in favour of one V. Ram Reddy and one V. Babu Rao respectively. The demand drafts bore Nos. 2211 and 2212 and were for a sum of Rs. 25/- each. These demand drafts were materially altered whereby the date of issue was shown as 02.11.1976, the payee was shown as M/s. Sudershan Trading Corporation (for short, "STC") and the amount payable under demand draft No. 2211 Was shown to be Rs. 14,500/- and the amount payable under demand draft

No. 2212 was shown to be Rs. 35,500/-. The demand drafts were also crossed. Copies of these demand drafts were marked as Exs.A4 and A6.

4. The materially altered demand drafts were deposited for collection at the defendant bank on 03.11.1976 and 04.11.1976 by one Sunder Rao claiming to be the proprietor of STC. The plaintiff bank, upon enquiry, came to know that the said Sunder Rao opened an account with the defendant bank only on 2nd or 3rd of November 1976 in the name of STC claiming to be its proprietor. The plaintiff bank alleged that no enquiry or verification was made by the defendant bank about the creditworthiness and genuineness of STC or its alleged proprietor, Sunder Rao. The plaintiff bank further alleged that the defendant bank credited the amounts due under the materially altered demand drafts to the account of STC on 05.11.976 and allowed withdrawal of cash to the extent of Rs. 50,000/- from the said account under the cheques marked as Exs.B8 and B9, before the realization of the said amount from the plaintiffs bank.

5. The plaintiff bank alleged that this constituted a clear case of negligence on the part of the defendant bank, both in the opening of the account and also its operation.

6. The plaintiff bank admitted that in view of the presentation of the altered demand drafts by the defendant bank, the plaintiff bank paid the amounts due thereunder totaling Rs. 50,000/- to the account of the defendant bank without knowing the truth of their alteration. The plaintiff bank came to know about the fraud in this regard only on 27.10.1977 when its internal audit detected the same. The plaintiff bank filed a complaint before the police authorities on 31.10.1977 and sued the defendant bank for recovery of Rs. 49,950/-along with interest thereon quantified at Rs. 7,249.19 ps. till the date of filing of the suit, future interest and for costs.

7. The defendant bank filed a written statement stating as follows:

The demand drafts bearing Nos.2211 and 2212 issued by the plaintiff bank were deposited for collection with the defendant bank on 03.11.1976 and 04.11.1976 by one Sunder Rao claiming to be the proprietor of STC, who had opened a current account with the defendant bank. Sunder Rao was introduced properly by another customer of the bank and thereupon an account was opened on 03.11.1976 in the name of STC, of which he claimed to be the proprietor. The defendant bank denied that it had not made any sort of enquiry or verification prior to the opening of this account.

8. The defendant bank asserted that as per the banking practice no detailed enquiry is required to be made about the creditworthiness of the customer for opening of a current account. As the defendant bank was not advancing a loan to Sunder Rao there was no necessity to institute any discreet enquiry into his character or creditworthiness. The defendant bank stressed upon the fact that the plaintiff bank had passed the drafts at its end and had credited the amounts due thereunder to the account of the defendant bank, which clearly

demonstrated that the plaintiff bank had not suspected anything remiss with the demand drafts. According to the defendant bank, the plaintiff bank ought to have been more careful before passing the drafts and should have verified the same with their branch at Suryapet, had they suspected any fraud owing to the largeness of the amount "involved. Having failed to take necessary precautions, the defendant bank alleged that the plaintiff bank was now trying to throw the blame on it. The fact that the plaintiff bank took a year's time to detect this irregularity clearly showed that there was slackness and lethargy on its part and the burden could not be shifted to the defendant bank. The defendant bank claimed that it had acted in a bona fide manner in the ordinary course of business, in good faith and without negligence. The negligence, if any, was said to be on the" part of the plaintiff bank itself.

9. With regard to the material facts, the defendant bank stated that Sunder Rao, claiming to be the sole proprietor of STC, opened a current account with the defendant bank on 03.11.1976 with an initial deposit of Rs. 100/-. He was properly introduced to the bank by another customer, Idukulla Lakshamaiah. As the introducing customer was well known to the defendant bank, after making enquiries with the introducing customer as to the new customer, the Manager of the defendant bank obtained necessary signatures from both of them and processed the opening of the account. Sunder Rao presented the demand draft for Rs.14,500/- (Ex. A.4) on 03.11.1976 and presented another demand draft for Rs. 35,500/- (Ex. A.6) on 04.11.1976. Both the drafts were sent to the plaintiffs bank for collection. The amounts due under these drafts were provisionally credited in the account of STC on 05.11.1976. On 08.11.1976 the amounts were withdrawn under the cheques Exs. B8 and B9.

10. According to the defendant bank, it was for the plaintiff bank to have detected the alteration of the demand drafts. Had the plaintiff bank caused any enquiry with its branch at Suryapet, which had issued the subject demand drafts, the matter would have come to light immediately. This failure on the part of the plaintiff bank is categorized by the defendant bank as a strong indicator of the plaintiff bank's own negligence. The defendant bank claimed that there was no irregularity in the opening of the account or the payment of the sums and there was no negligence on its part. The defendant bank accordingly prayed for dismissal of the suit.

11. Upon the above pleadings, the Court below framed the following issues:

1. Whether the demand drafts bearing Nos. 2211 and 2212 dated 30.10.1976 issued by the plaintiff, bank branch at Suryapet in favour of one V. Ram Reddy and one V. Babu Rao respectively for Rs. 25/- each and whether they were materially altered to read as dated 02.11.1976, payee as Sudershan Trading Corporation, for Rs. 14,500/- and Rs. 35,500/- respectively and were crossed before they were presented in the defendant's bank for" collection?
2. Whether the altered demand drafts dated 02.11.1976 bearing Nos. 2211 and

2212 were credited to the account of Sudershan Trading Corporation on 05.11.1976 before the amounts were actually realized by the defendant bank?

3. On what date the defendant bank realized the draft amounts i.e. D.D. Nos. 2211 and 2212 dated 62.11.1976 totalling Rs. 50,000?

4. On what dates the defendant bank paid the amounts to its customer, Sudershan Trading Corporation, the amounts under D.D. Nos. 2211 and p. 12 dated 02.11.1976?

5. Whether the defendant bank was negligent and acted contrary to the established practices of banking in the opening of account, collection, and payment of the amounts under the, said two drafts to the said Sunder Rap?

6. Whether the defendant bank is liable to reimburse the plaintiff bank for the loss due to the alleged; fraudulent withdrawal of the monies?

7. To what relief?

12. The plaintiff bank examined P.Ws. 1 to 6 and marked Exs. A1 to A19 in support of its case. The defendant bank examined D.Ws. 1 to 3 and produced documentary evidence in the form of Exs. B1 to B18.

13. The Court below upon consideration of the pleadings, depositions and the evidence on record decreed the suit by its judgment and decree dated 30.06.1987 holding that the defendant bank was guilty of negligence and was accordingly liable to pay the amount claimed by the plaintiff bank.

14. Heard Sri K Mallikarjuna Rao appearing for the appellant/defendant bank and Sri S. Ravindranath for the respondent/plaintiff bank.

15. Sri K. Mallikarjuna Rao, learned Counsel, contended that the Court below erred in coming to the conclusion that there was negligence on the part of his client though it was clear on facts that it was the plaintiff bank which had been utterly negligent in the processing of, the demand drafts. He placed reliance upon the depositions of the witnesses examined on behalf of the defendant bank.

16. D.W. 1 was the accountant of the defendant bank at Nalgonda at the relevant point of time. He stated that he was in overall supervision of deposits, presentations of cheques and demand drafts. Under deposits supervision, he also supervised current accounts. He spoke about the subject transaction pertaining to the presentation of the demand drafts Exs. A4 and A6. He stated that on 05.11.1976, credit was given in the account of STC for the sums due under these demand drafts. The credit was only provisional credit and he stated that the customer would not have been permitted to withdraw such amounts though provisional credit had been given in the account. According to him, the bank would wait for one or two days to hear the result of the passing of the demand drafts by the collecting bank and only thereafter, it would permit the withdrawal of the amount so credited to the customer's account. He specifically said that the bank would make an enquiry with the concerned bank about the demand

draft collection and only thereafter, pay the customer. He admitted that the amounts credited to the account of STC under Exs. A4 and A6 were withdrawn on 08.11.1976. He stated that prior to this withdrawal the customer had approached the Special Assistant of the defendant bank to enquire whether the instruments had been honoured and upon being apprised of the same, he made a telephonic enquiry with the plaintiff bank and learnt that the demand drafts had been passed.

17. With regard to the precautions taken for the opening of new accounts, D.W. 1 stated that for the opening of a current account by an individual, only introduction by an existing customer is insisted upon and No. further enquiries were required to be made. However, he admitted that in the case of a proprietorship account, the bank would obtain a letter of sole proprietorship, which had not been done in the case of STC. He also stated that after the opening of the said account he had asked the supervisor, Waghrey, about the letter of sole proprietorship and was told that the same would be obtained from the concerned person.

18. He denied the suggestion that in the case of instruments drawn on local banks, credit would not be given to the customer's account until the amount was realized by the defendant bank. He stated that the amount under Ex. A4 demand draft was realized by the defendant bank on 08.11.1976 and the amount under Ex.A6 demand draft was realized on 09.11.1976. He stated that though he enquired on the phone with the plaintiff bank on 08.11.1976 he did not remember whether he spoke with the Manager or the Secretary of the plaintiff bank. He accepted that he had not noted the fact of such enquiry having been made over the telephone and asserted that there was no such practice. He denied the suggestion that he had not made enquiries about the fate of the demand drafts on 08.11.1976 with the plaintiff bank and also the suggestion that there was no practice in the defendant bank about enquiring with the payee bank over the telephone about the fate of the demand drafts when they were sent for collection. He denied the suggestion that there was collusion between STC or its proprietor on the one hand and the defendant bank's staff on the other.

19. D.W. 2 was the Special Assistant of the defendant bank at the relevant point of time and was also the supervisor of current accounts. The opening of the current account of STC was supervised by him. While speaking about the opening of the subject account through the introduction made by Idukulla Lakshmaiah, an existing account holder, D.W. 2 stated that in the case of a proprietorship concern, the bank would make an enquiry with the introducer of the account and would ask for a rubber stamp of the proprietorship concern. He admitted that the bank would make an enquiry about the nature of business of the concern. He spoke about the deposit of the subject demand drafts in the current account of STC, though he was unable to recall the exact dates as to when they were presented. According to him, three or four days after such presentation, the concerned person came for withdrawing the amount and upon his enquiry, D.W.

2 asked the accountant D.W. 1 about the fate of the demand drafts. Thereupon, D.W1 informed D.W. 2 that he would telephone to the plaintiff bank and would inform him thereafter. D.W.2 recalled that his happened on 08.11.1976.

20. While speaking of the usual banking practice followed by the defendant bank he stated that when a demand draft was received for collection, they would look at the amount, the name, the date of the demand draft and the bank on which it was drawn. D.W. 2 asserted that it was not expected of the bank to make any further enquiry into the genuineness of the demand draft. According to him, it is the duty of the payee bank to verify the genuineness by scrutinizing the draft before passing it when it is presented for collection. He conceded that he had forgotten to obtain, a declaration of proprietorship in the proforma provided under Ex. B10 from Sunder Rao. He stated that when D.W.1 pointed out this aspect, he had informed him that he would obtain the same subsequently: He, however, admitted that he had forgotten to obtain the said declaration even thereafter, as he was busy with day-to-day transactions. D.W.2 stated that he had enquired into the business of the proprietorship concern STC before opening of the current account. According to him Sunder Rao told him that he was involved in the sale of locally manufactured steel almirahs. He also spoke about the introducer, Idukulla Lakshmaiah, who was personally known to him and was an existing account holder. He, however, denied the suggestion that the account ought not to have been operated unless and until the proprietorship concern submitted a letter of declaration in Ex.B10 proforma. He also denied the suggestion that he was in collusion with Sunder Rao. He denied the suggestion that the defendant bank should not have allowed withdrawal of the amount until realization of the amounts due under the demand drafts Exs.A4 and A6. He admitted that on 08.11.1976, Ex.A6 had not been realized by the defendant bank. He stated that once the instruments were presented for collection and no information was received by the bank for two days, the instruments were deemed to have been passed by the payee bank.

21. D.W. 3 was the Manager of the defendant bank at Nalgonda at the relevant point of time. He admitted that he had passed orders to honour the cheque - Ex.B9 for Rs. 48,000/-. He stated that he went through the ledger account of the account holder before passing the order for payment under Ex.B9. He also stated that he knew that Sunder Rao had opened the account recently. He also admitted that he knew that the account holder was withdrawing under Ex.B9 the entire amount under the two instruments deposited by him for collection. He denied that the defendant bank had acted negligently and without good faith in opening the account of STC through Sunder Rao and allowing him to operate the same.

22. Sri Mallikarjuna Rao, relying upon the above evidence, submitted that his client was entitled to the projection afforded to it by Section 131 of the Negotiable Instruments Act, 1881 (for short, "Act of 1881) and that the Court below erred in appreciating the facts of, the case and applying the law.

23. On the other hand, Sri S. Ravindranath, learned Counsel for the respondent/

plaintiff bank contended that the statutory protection afforded by Section 131 of the Act of 1881 could not be claimed by the defendant bank. He relied upon the oral evidence adduced by his client and also the admissions made by the defendant bank's own officers. He drew the attention of the Court to the evidence of P.W.2, the cashier of the plaintiff bank at Suryapet at the relevant point of time. Having spoken about the issuance of the two demand drafts bearing Nos. 2211 and 2212 on 30.10.1976 for Rs. 25/- each, P.W.2 said that the demand drafts were materially altered with regard to the date, amount and payee's name. He, however, admitted that his signature and that of the Manager, Bixamaiah, were genuine. He stated that during those days the Suryapet branch was issuing one or two demand drafts in a month and for some months there was no business in the issuance of demand drafts. P.W. 2 stated that demand draft transactions in the Suryapet branch were very scarce and that the highest demand draft sold during his period of service was not above Rs. 200/-. He also stated that cash receipts were entered in the cashbook and extracts of the said account was sent to the Head Office at Nalgonda. He also admitted that there was a banking, practice of informing the drawer bank about the sale of demand drafts but the plaintiff bank had not intimated the defendant bank at Nalgonda of the issuance of Exs.A4 and A6. He also said that the defendant bank did not intimate the plaintiff bank at Suryapet about the honouring of the said demand drafts. P.W. 2 further stated that the Suryapet branch of the plaintiff bank had the authority to issue demand drafts upto the value of Rs. 5,000/- to Rs. 6000/- and not more. According to him, the head office at Nalgonda also knew the issuing capacity of the Manager of the Suryapet branch of the plaintiff bank. He agreed that to the naked eye Exs. A4 and A6 did not disclose any tampering, In his re-examination, P.W.2 contradicted himself by stating that he was not aware of any circular or instruction limiting the power of the Manager, Bixamaiah, to issue demand drafts of a value up to Rs. 10,000/-. He stated that out of his imagination he had made the statement to that effect in his cross-examination.

24. Bixamaiah, Manager of the plaintiff bank at Suryapet during the relevant period was examined as P.W. 3. He echoed the version of P.W. 2 that demand draft transactions at the Suryapet branch were very rare. Speaking of the practice of the branch for issuing demand drafts he admitted that entries of demand draft transactions would be made in the day book and an extract thereof would be sent on the same or the next day to the head office. He admitted his signatures in Exs.A4 and A6 but stated that all other writings therein were neither in his handwriting nor that of P.W. 2. He also admitted that till 27.10.1977 nothing was known about the demand drafts Exs.A4 and A6. He also stated that the cash book entries containing receipts and payments including information of the issuance of Exs.A4 and A6 demand drafts was sent to the head office either that day or the next day but he could not recall the exact date. The head office is also said to have informed him of the receipt of the cashbook entries. He also said that the Suryapet branch account would be reconciled every

month in the head office but the head office never made enquiries with him about the variation in Exs.A4 and A6 at the time of issuing and at the time of honouring. He also admitted that there was a practice of enquiring about the fate of demand drafts and cheques over telephone by and between the Managers of different banks. He said that there was no limit for issuance of demand drafts at that time. He also said that no disciplinary action had been taken against him or against P.W.2 with regard to issuance of Exs.A4 and A6.

25. P.W.4 worked as an Accountant at the plaintiff bank's branch at Nalgonda, the head office of the Suryapet branch. He stated that Ex. A4 demand draft was passed by the Manager, Madhu Sudhan Reddy on 06.11.1976 and the payment was made to the defendant bank through a cheque dated 06.11.1976 drawn on SBH, Nalgonda for a sum of Rs. 14,500/-. The said cheque was sent to the defendant bank on the same day and bore the signatures of P.W.4 and the Ivianager, Madhu Sudhan Reddy. Similarly, Ex.A6 demand draft was passed by the Secretary, Late Tirumala Rao on 09.11.1976 for a sum of Rs. 35,500/- and a cheque was drawn on the same day and sent to the defendant bank for the said sum.

26. P.W.5, Madhu Sudhan Reddy, worked, as the Manager of the plaintiff bank's branch at Nalgonda during the relevant time. He admitted passing Ex.A4 demand draft on. 06.11.1976 after satisfying himself about the signature of the person from the issuing, bank. He also admitted issuing a cheque for the amount of Rs. 14,500/-covered by Ex. A4 in favour of the defendant bank. Ex. A6 demand draft was said to have been passed by the Secretary, late Tirumala Rao on 09.11.1976 and on the same day a cheque was issued by him under his signature and the signature of P.W.4 for a sum of Rs. 35,500/- in favour of the defendant bank. He also admitted that the fraud came to light in October 1977 owing to the internal audit of the plaintiff bank's accounts. He stated that when a demand draft is presented for collection it is passed on the same day or, after two or three days. He also stated that according to the procedure they passed the demand draft on the same day of its presentation. He conceded that he did not entertain any doubt about the huge sums" mentioned in Exs.A4 and A6. He denied that there was any banking practice of making enquiries over phone about the passing of demand drafts and cheques. He admitted" to having received the daybook extracts from the Suryapet branch of the plaintiff bank on 15.11.1976 about Exs.A4 and A6. They were not entered in the accounts of Suryapet branch with the head office. He stated that even thereafter no such entries had been1 made. He also stated that he came to know that the daybook extract was received by the head office on 15.11.1976 only after the detection of the fraud.

27. P.W.6 was the internal auditor of the plaintiff bank in 1976 and spoke aboutthe detection of the alteration of the demand drafts Exs.A4 and A6.

28. Basing on the above evidence and the" material on record, the learned Counsel for the respondent/plaintiff bank contended that the defendant bank was squarely liable for the conversion of the altered instruments! He submitted that



the negligence of the defendant bank in the opening of the account and its operation clearly disentitled the defendant bank from seeking protection u/s 131 of the Act of 1881.

29. On an analysis of the above material; pleadings and evidence the following points arise for consideration in this appeal:

1. Whether the appellant/defendant bank failed to take proper and necessary care in the transactions involving the opening of the account of M/s. Sudershan Trading Corporation through Sunder Rao and its operation.

2. Whether the appellant/defendant bank a in good faith and without negligence In the matter of honouring the demand drafts Exs.A4 and A6 presented by Sunder Rao and permitting him to withdraw the amounts credited thereunder?

3. Whether the temporal proximity of the transactions i.e. the opening of the account, the presentation of the demand drafts Exs. A4 and A6 and the withdrawal of the credited amounts encashed under Exs.B8 and B9, made the transactions a single Scheme warranting greater. care and circumspection on the part of the appellant/defendant bank?

4. Whether the appellant/defendant bank "is entitled to claim protection u/s 131 of the Negotiable Instruments Act, 1881?

30. The facts of the case, as culled out from the pleadings, depositions and evidence on record, germane to this adjudication fall within a short compass Exs.A4 and A6 demand drafts were issued by the plaintiff bank's branch at Suryapet on 30.10.1976 for a sum of Rs. 25/- each. While so, on 03.11.1976 one Sunder Rao, professing to be the proprietor of the proprietary concern, M/s. Sudershan Trading "Corporation, approached the defendant bank for the purpose of opening an account. He was introduced by an existing customer/account holder of the defendant bank, Idukulla Lakshmaiah. There was an irregularity in the opening of this new account inasmuch as the defendant bank failed to obtain a letter of declaration of proprietorship, which is admittedly required for the opening of an account of this nature. The altered demand drafts Exs.A4 and A6 Rearing the date 02.11.1976 and made it for a sum of Rs. 14,500/- and Rs.35.5p0/- respectively were presented to the defendant bank on 03.11.1976 and 04.11.1976 through the newly opened account. On 05.11.1976 the amounts under Exs. A4 and A6 were provisionally credited to the newly opened account. On 08.11.1976, two cheques Exs. B8 and B9 for Rs. 2,000/- and Rs. 48,000/- respectively were presented to the defendant bank for withdrawing the amounts credited under the demand drafts Exs.A4 and A6 and the amounts were withdrawn on the said date. The amounts were permitted to be withdrawn by the defendant bank even before the defendant bank realized the amount due under Ex.A6. Iatum, the plaintiff bank honoured the transactions by remitting the amounts due under the altered demand, drafts to the defendant bank under its cheques dated 06.11.1976 and 09.11.1976. It is also pertinent, to note that this fraud did not come to light till 27.10.1977 through the internal audit of the

plaintiff bank.

31. The facts as established also indicate that there was negligence on the part of the plaintiff bank insofar as honouring of the altered demand drafts is concerned. It is brought on record that the Suryapet branch of the plaintiff bank was required, as per the procedure, to keep the head office at Nalgonda informed of the transaction and in fact, it is stated to have done so in this case. The altered demand drafts Exs.A4 and A6 were sent to the plaintiff bank's head office at Nalgonda by the defendant bank and had the plaintiff bank been vigilant, the factum of the alteration would have immediately come to light. However, the plaintiff bank failed to identify the fraud at this stage and meekly honoured the altered instruments. The said fraud remained undetected for nearly one year thereafter. In such circumstances when it is admitted by the plaintiff bank's own employees that the tampering was not detectable to the naked eye, no fault can be found with the defendant bank for failing to detect the forgery of the amounts and other material particulars in Exs.A4 and A6.

32. However, the mere fact that the plaintiff bank contributed by its negligence to the fraud and the fact that the defendant bank could not have detected the alteration through a simple examination, does not resolve the matter, under Section 131 of the Act of 1881, protection is afforded to a banker who acts in good faith and without negligence in an instrument conversion. Sections 131 and 131A reads as follows:

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.

131-A. Application of Chapter to drafts.--The provisions of this Chapter shall apply to any drafts, as defined in Sections 85A, as if the draft were a cheque.

33. Therefore, unless the defendant bank is in a position to demonstrate that it acted In good faith and without negligence in the transaction, it would not be absolved of the liability of accounting to the plaintiff bank for conversion of the materially altered instruments Exs. A4 and A6.

34. Sri K. Mallikarjuna Rao, learned Counsel for the appellant/defendant Bank

relied upon the judgment of a learned single Judge of this Court in *Andhra Bank Vs. Kurnool District Co-operative Central Bank Ltd.*, . In that case, the learned Judge observed that the opening of an account was different from collecting amounts under drafts or cheques from the payee Bank and that the two stages have to be considered separately and not as a single act while dealing with the aspect of good faith or lack of it and negligence or absence of the same. The learned Judge further held that if a customer opens an account with cash and there is no suspicion about the manner in which the account is opened, the fact that the Bank made no enquiries about the customer and his address would not disentitle the Bank to the benefit of Section 131 of the Act of 1881.

35. The learned Counsel sought protection under the principle enunciated in the above case and contended that his client was also equally entitled to the immunity offered by Section 131 of the Act of 1881.

36. Per contra, Sri S. Ravindranath, learned Counsel for the respondent/plaintiff Bank placed before me a judgment of the Supreme Court in *The Kerala State Co-operative Marketing Federation Vs. State Bank of India and Others*, . Therein, the Supreme Court extracted the principles governing the liability of a collecting Banker in the context of Section 131 of the Act of 1881. They read as follows:

(1) As a general rule the collecting banker shall be exposed to his usual liability under common law for conversion or for money had and received, as against the "true owner" of a cheque or a draft, in the event the customer from whom he collects the cheque or draft has 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 form 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 an integrated plan.

(6) Negligence in opening the account such as failure to fulfil the procedure for opening an account which is prescribed by the bank itself or opening an account of an unknown person or a 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 standpoint 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.

37. Applying the said principles to the facts of that case, the Supreme Court held that the transaction of opening of the account, depositing of the exact amount for entitlement to receive a cheque book, deposit of the tainted instrument and the withdrawal of the sum thereunder were all part of the same transaction as they took place in close proximity to each other and held that the collecting bank therein had not discharged the burden which lay upon it to show that it had acted in good faith and without negligence.

38. To counter the above judgment of the Supreme Court cited by the learned Counsel for the respondent/plaintiff Bank, Sri K. Mallikarjuna Rao, the learned Counsel for the appellant/defendant Bank, contended that judgments need to be contextually interpreted in the light of the obtaining facts of each case. He submitted that the facts alone would be determinative of the adjudication and the totality of the circumstances in the present case indicated that his client had not been negligent in the matter of conversion of the demand drafts-Exs.A.4 and A.6. He pointed out that the plaintiff Bank had itself been negligent in passing the said demand drafts and in detecting the fraud perpetrated thereunder. In the light of the same, he contended that the concept of negligence could not be built up on notional or imaginative grounds and must necessarily collapse on the established factual foundation of the present case. He relied upon various judgments in his attempt to dilute the effect of the Supreme Court Judgment aforestated.

30. The judgment of the Supreme Court in Municipal Corporation of Greater Bombay and Others Vs. Thukral Anjali Deokumar and Others, , is relied upon to highlight the proposition that any observation in a Judgment has to be read and

understood in the context of the facts of that particular case, in respect of which such observation has been made.

40. Another Judgment of the Supreme Court in ICICI Bank Ltd. and Another Vs. Municipal Corporation of Greater Bombay and Others, is relied upon to support the proposition that the ratio and effect of a Judgment is required to be ascertained with reference to the question of law decided by the Court. The Supreme Court further held therein that the ratio of the judgment or the principle upon which the question before the Court is decided is alone binding as a precedent.

41. The learned Counsel also placed before me a Judgment of a Division Bench of the Bombay High Court in State of Maharashtra Vs. Prashram Jagannath Aute, . In the said decision, the Bombay High Court held that before a precedent could be applied to a subsequent case, the Court had to examine that such a precedent satisfied the principles of ratio decidendi. The Court observed that such a precedent must be applied on facts and on questions of law.

42. The judgment of the Supreme Court in Nadia Distt. Primary School Council and Another Vs. Sristidhar Biswas and Others, held that a judgment given on concession wherein it was clearly mentioned that it shall not be treated as a precedent cannot be said to be binding.

43. Lastly, the Judgment of the Supreme Court in The Oriental Insurance Company Limited Vs. Meena Variyal and Others, is relied upon by the learned Counsel for the appellant/defendant Bank. Therein the Supreme Court observed that merely going by some decision or order, without appreciating the facts in a given case in the light of the law, would not lead a Court to the correct conclusion in the normal course.

44. There can be no dispute with the propositions aforesaid reflected in the judgments cited by the learned Counsel for the appellant/defendant Bank. However the judgment of the Supreme Court in Kerala State Co-operative Marketing Federation's case relied upon by the learned Counsel for the respondent/plaintiff Bank squarely applies on all fours to the facts of the present case. Further, the principles of law applicable to a Banker's liability for conversion of a tainted instrument in the context of Section 131 of the Act of 1881 as laid down in the said Judgment are determinative of the present litigation. In this regard, it may be noticed that the general rule is that the collecting Banker would be liable under common law for conversion of an instrument devoid of title or tainted with a defective title. However this being the general rule, the exception would be the protection afforded to such a Banker by Sections 131 and 131A of the Act of 1881. Such protection is conditional upon proof of good faith and absence of negligence on the part of such Banker as is evident from the language of Section 131. The protection in respect of cheques u/s 131 is extended to demand drafts u/s 131A of the Act of 1881. Further, it is for the Banker who is seeking such protection to discharge the burden of proof that

he acted in good faith and without negligence. The Supreme Court recognized that negligence was a question of fact and pointed out that where the account was opened with the cheque in question or the same is deposited therein so soon after opening of the account as to lead to an inference that the depositing of the tainted cheque and the opening of the account were interconnected moves in an integrated plan, the same should be indicative to the collecting Banker that there was something remiss. It is also to be noticed that failure to fulfil the procedure in the opening of the account may also lead to a cogent though not conclusive proof of negligence, particularly if the cheque in question was deposited in the account soon after the opening thereof. The Supreme Court also recognized that the contributory negligence of the paying Banker could provide no defence to the collecting Banker who has not collected the amount in good faith and without negligence.

45. Applying the above legal principles to the facts of the present case, it is an admitted fact that the current account of STC was opened on 03.11.1976 with an initial deposit of Rs. 100/- and thereupon a cheque book was issued to Sunder Rao, the alleged proprietor of STC. The tainted demand drafts-Exs.A.4 and A.6 were presented through the said account on 03.11.1976 and 04.11.1976. The amounts thereunder were withdrawn on 08.11.1976.

46. Needless to state, the temporal proximity amongst these events clearly demonstrates that they were interconnected moves of an integrated plan. Though it was not required that the appellant/defendant Bank detect the tampering of Exs.A.4 and A.6 by way of a minute and microscopic examination, the fact remains that the appellant/defendant Bank, being aware of the proximity of the above mentioned events, ought to have suspected the bona fides of the transaction. All the more so, as the entire amount deposited in the account through the tainted instruments was being withdrawn. It is admitted by the Manager of the defendant Bank (D.W.3) that he was aware of the recent opening of the account and that the entire amount under the two demand drafts Exs.A.4 and A.6 was being withdrawn. This admission by the defendant Bank's Manager is clearly fatal to the case of, the defendant. This knowledge ought to have led the defendant Bank to suspect that there was something remiss. This failure on its part renders the action of the defendant Bank in permitting the conversion of the tainted demand drafts Exs.A.4 and A.6 utterly negligent and lacking in good faith.

47. Further, there was also an irregularity in the opening of the account of STC as no declaration of sole proprietorship was obtained. This, of course, is not conclusive proof of negligence but viewed in the context of the defendant bank's disregard of the temporal proximity of the events aforesaid, it gains significance and is demonstrative of the utterly negligent and careless attitude of the defendant bank. Further, as recognized by the Supreme Court, the negligence of the plaintiff bank fades away once it is established that the defendant bank was negligent.

48. Reference in this regard may also be made to a Judgment of a Division Bench of the Madras High Court in *Indian Bank Vs. Catholic Syrian Bank Ltd.*, wherein it was held that a collecting Bank could not invoke Sections 131 and 131A of the Act of 1881 to its aid when it is found that the opening of the account was not done without negligence and the presentation of the instrument for collection was done so proximately as would suggest a close nexus with the opening of the account itself. This decision is of persuasive value but the binding precedent of the Supreme Court on the same lines in *Kerala State Co-operative Marketing Federation's* case ordains the end result of this adjudication.

49. Therefore, applying the principles of law enunciated in the said Judgment to the facts and circumstances of the present case, it is held that the appellant/defendant Bank being liable for the conversion of the tainted demand drafts Exs.A.4 and A.6 under the general rule failed to discharge the burden of proving good faith and lack of negligence so as to seek protection under the provisions of Sections 131 and 131A of the Act of 1881. The proximity of the opening of the account, presentation of Exs.A.4 and A.6 and withdrawal of the amounts thereunder through Exs.B.8 and B.9 clearly demonstrate that the appellant/defendant Bank ought to have suspected the bona fides of the transaction and that it failed to take proper and necessary care in the matter. This failure amounts to negligence and demonstrates lack of good faith on the part of the appellant/defendant Bank, clearly disentitling it to protection u/s 131 of the Act of 1881.

50. The judgment and decree under appeal holding that the plaintiff bank is entitled to a sum of Rs. 57,199/- with interest at the rate of 6% per annum on the amount of Rs.49.950/- from the date of the suit till realization along with costs are therefore found to be unassailable on facts and in law and are accordingly confirmed. The appeal is dismissed but in the circumstances of the case, there shall be no order as to costs.