
(1987) 09 MAD CK 0015
In the Madras High Court
Case No : App. No. 420 of 1982

The Vysya Bank Ltd., Madras

APPELLANT

Vs

Indian Bank, Madras

RESPONDENT

Date of Decision : 24-09-1987

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 131

Citation : AIR 1988 Mad 256

Hon'ble Judges : Sivasubramaniam, J;Sathiadev, J

Bench : Division Bench

Advocate : M. Shamadas, for the Appellant; A.S. Thitmbuswarny, for the Respondent

Judgement

Swasubramaniam, J.—The unsuccessful defendant in O.S. 3807 of 1977 on the file of the IV Additional Judge, City Civil Court, Madras, is

the appellant in this regular appeal. The respondent herein was" the plaintiff in the said suit which was filed for recovery of a sum of Rs. 47,882.86.

2. The material allegations in the plaint are as follows - One B.K. Shetty purchased a draft for Rs. 20 bearing Rs. 71.58149 dt. 27-3-1974 from

the Ambar Branch of the Indian, Bank, the plaintiff. One B. Ramaswami had, purchased another draft for Rs. 30 bearing ,Rs. 727112 dt. 2-11-

1974 . from the Vaniyambadi branch of the Indian Bank. One. S. Ramanathan who has got an account with" the south Thambalarn branch of the

defendant bank namely Vysya Bank Ltd., appears to have got into possession of these two drafts; and those two drafts were materially altered.

The name of the payee the amount the name of the branch on which the drafts were issued, were all altered. Though the drafts were purchased for

payment by the Salem Main Branch of the plaintiff Bank the name of the Branch

was altered as Harbour Branch and.; the amounts were altered as Rs. 15000 and Rs. 21000 respectively. The name of the payee was altered as S. Ramanathan. These two drafts were put in the account, of S. Ramanathan, which he had with the defendant, bank. These two drafts were presented for collection in the clearing house and they were paid with an endorsement that they were paid without advice pending receipt of the usual protection advice from the issuing branch. Later on the Harbour branch was informed by the Vaniambadi Branch by their letter dt. 8-6-1976 that they did not issue any draft for Rs. 21,000/- so also the Ambar Branch informed that they did not issue any draft for Rs. 15000. A complaint was given to the Crime Branch of the North Beach police station and the payee could not be traced as it was reported that he was dead. But for the endorsement made by the South Marnbalam branch of the defendant Bank, payments would not have been made for these two demand drafts by the plaintiffs Bank. The plaintiff supposes that S. Ramanathan, the customer of the defendant Bank, is a bogus person who has no permanent address. The defendant Bank acted with gross negligence in the matter of opening an account in the name of Ramanathan without proper introduction or making proper enquiries. The immediate withdrawal of substantially the whole amount covered by the two drafts ought to have raised suspicion in the minds of the persons who dealt with the drafts when they were remitted with the defendant Bank. So, the defendant is not entitled to the protection under S. 131-A of the Negotiable Instruments Act. Hence the plaintiff has filed the suit for recovery of the total sum of Rs. 36,000 covered by the two drafts together with interest of Rs. 11882.96 all totaling Rs. 47,882.96.

3. The appellant defendant resisted the suit and filed a written statement raising the following contentions. On the basis of the allegations made in the plaint, an inference is fairly possible that the drafts were in fact issued for the sum of Rs. 15000 and Rs. 21000 respectively in favour of a genuine person bearing the name of S. Ramanathan. For almost ten weeks, the plaintiff Bank failed to intimate the defendant casting any doubt on the genuineness of the drafts. So, it is likely that something must have happened at the plaintiffs, bank, branches at Ambur and Vaniambadi in respect of the alleged alterations. The plaintiff acted negligently and without reasonable

care and caution in having made the payment without the protection at advice from the issuing bank. Since, it alleged by the plaintiff Bank. Themselves that the alterations of the name of the payee, the amount and the name of the draw Bank were not visible to the naked eyes and they are not capable of arousing any suspicion, there cannot be any justification for the defendant Bank to suspect that its customer was not a true owner, of the drafts or that the drafts were not genuine. The T. Nagar branch of the defendant Bank was opened on 18-3-1974. Thiru S. Ramanathan; opened the current account on 21-3-1974 by making a cash deposit. One week later, he deposited the draft for Rs. 15000 for collection and the amount was withdrawn by 4 different cheques. The second draft for Rs. 21000 was deposited on 3-4-1974, and a major portion of the amount was withdrawn in 4 different cheques and there was a balance of Rs. 1310 in the account. Since the account was opened with cash there was nothing suspicious about the manner in which the account was opened. There was no need or circumstances necessitating any special enquiries to be made about the customer who was duly introduced by another customer of the Branch. Since the first draft was deposited a week later, it cannot be suggested that there was any connection between the opening of the account and the issue of the draft. So, the defendant is entitled to the protection under S. 131-A of the Negotiable Instruments Act.

4. On the pleadings of the parties, the trial Court framed as many as six issues and decreed the suit holding that the defendant Bank did not act in good faith and without negligence And so they are not entitled to the "protection under S. 131-A of the Negotiable Instruments Act. Aggrieved against this decision the defendant has filed the above appeal.

5. The following points would arise for consideration in this appeal - -

(1) Whether the defendant Bank has acted in, good faith and without negligence and is entitled to protection under S. 131-A of the Negotiable Instruments Act?

(2) Whether the plaintiff Bank is guilty of contributory negligence in passing the drafts for payment?

6. Point Nos. 1. and 2 The plaintiff Bank has come forward with the present suit for recovery of the suit amount on the basis that the two drafts

Ex& A-7 and A-9 which were issued by their Ambur Branch and Vaniyambadi

branch respectively for Rs 20 and Rs. 30 respectively were tampered and materially altered with Rs. 15000 and Rs. 21000 respectively. The said drafts were originally issued in the name of B.K. Shetty and B. Ramaswami respectively and they have materially altered the names as S. Ramanathan. Though an issue was raised by the trial court as to whether the demand drafts are genuine or not and considered elaborately by the trial court it is unnecessary: for the purpose of the present appeal since both the parties have agreed that the drafts" Exs. P-7 and A-9 have been materially altered. Therefore, it is unnecessary to go into that, aspect now and the short question that has to be decided in this appeal is regarding the liability of the defendant Bank to reimburse the plaintiff Bank who were made to pay the said sums found in the altered drafts on the basis of the protective endorsement made by the defendant Bank on behalf of its customer. "We shall now deal with the two drafts Exs. A7 and A-9 as per the manner in which they were issued and materially altered.

7. Ex. A. 7 is the first draft issued by the Ambur branch of the Indian Bank on 27-3"1974. It was issued originally in the name of - one B. K.

Shetty for a sum of Rs. 20 and it was, addressed to the Salem Main branch of the Indian Bank, It is now found altered in respect .of the material

particulars, excepting the signature of the officer of the issuing bank. The payee7s name has been altered from S. K. "Shetty to S. Ramanathan and

the amount was altered as Rs. 15,000. Similarly instead of Salem Main branch, it is altered as harbour Madras. These alterations, according to

both ,the parties, have been done by erasing the original writings by a technical process. S. N. Shanmugam who was the Agent of the Bank

atAmbur branch of the Indian Bank examined as P. W. I in the suit, he proved the fact that the draft was originally issued for a sum of Rs. 20, in

the name of one B. K. Shetti and addressed to the Salem Main branch. He has explained the procedure in detail regarding the issue of a draft in

that Bank. According to him, a chalan is prescribed by the Bank in which the name of the person in whose favour the draft has to be issued, the

branch in which the payment is to be made and other particulars have to be filled up. Then the applicant will present the chaffan along with the

required amount to the cashier and. There after the challan will be passed on to

the clerk in the draft section who is expected to verify the particulars , furnished in the application for draft. "" After such verification, the clerk in the draft section will prepare a draft and sent it along with the challan to the officer concerned, After obtaining the signature of the concerned officer, the draft will be delivered to the applicant. The Bank is maintaining a register in respect of the issue of drafts wherein necessary particulars are noted in respect of each draft issued by the bank. He filed the register Ex. A 6, wherein the particulars relating to the draft Ex. A. 7 are entered. According to him, except the signature, all other particulars have been altered in the draft. P. W. 4 one R. S. Mani, who is the signatory for, the draft Ex. A. 7, was the then Accountant of the Ambur. Branch of the Indian Bank. He has corroborated the evidence of P. W.4, regarding the procedure for issuing drafts in their bank. During the course of his evidence, he has stated that according to the relevant entry in Ex. A. 6 register, the draft A. 7 was, purchased by one Ramu for payment to one B. K. Shetty. Therefore, the evidence of P. Ws. 1 and 4 proves the fact beyond any. doubt that actually the draft was issued only for Rs. 20 in favour of one B. K. Shatti and ,the name was subsequently altered as S. Ramanathan and the amount altered as Rs. 15000.

8. As regards draft Ex. A. 9 dated 2-4-1974, it was issued by Vaniambady branch of, the Indian Bank to one B. Ramaswami for a sum of RL 30.

The original writing of the figure Rs. 30 and the name of the payee B. Ramaswami and the payee Bank as Salem Main Branch have been altered.

In respect of this draft P. W. 3 by name Noorddin who was the Officer of the Vaniyambadi branch at the relevant time, has been examined. He

has spoken about the procedure for the issue of a draft in his branch, as spoken to by P.Ws. 1 and 4. He proved the register Ex. A. 8 and the

relevant entry found therein as Ex. A. 8(a). According to him, the draft

was originally purchased by one Ranganathan in favour of Ramaswami as per the entry found in Ex..A.8(a).

9. As already noticed, earlier, there is no dispute between the parties regarding the alterations of the drafts Exs.A.7 and A. 9, and it is nobody's

case that the said drafts are, genuine as they stand now. However, the drafts were sent to the Forensic expert for his examination and report. One

K. Ramakrishnan, a document expert has been examined as P.W. 6 in this case. He is attached to the Tamil Nadu Forensic Science Laboratory, Madras. In his evidence, he has given details about his examination of these documents in detail. According to him, his office received Ex.A-16 along with the disputed drafts Exs.A.7 and A.9. He has examined the disputed writings in Exs.A. 7 and A. 9 with a magnifying lense and also with special light. He has also stated that he examined the documents under microscope using various lights and also under violet light. He has taken enlargements of the photographs which are marked as Exs. A. 20 and A. 21 and has submitted a report marked as Ex. k 17. He is of the opinion that an attempt has been made to chemically erase the original writing in these drafts. He gave a definite opinion to the effect that the ink used for the two writings is different. According to him, the present writing was written with a ball point pen, while the original writing was written with an ordinary pen. However, it was elicited, from him that he was not asked to examine whether the original writer could have written the, substituted writings. It is also in evidence that no other documents were given to him, for examination or comparison. He was cross examined at length as to the manner of the erasure by chemical process and the method adopted by him for finding out the tampering of the drafts. He stated that he did not do any chemical fuming. According to the learned, counsel for the appellant, only if a chemical fuming is done the original writing as well as the present writing will be visible. P.W. 6 has given, a categorical opinion by stating that; since the photographs taken in respect of both the drafts furnished all materials to find out the original writing he did not fume the documents. According to him, depending on the nature of fuming in some cases the writing will fade away and in some cases it will not. Ultimately, he gave the opinion in reexamination stating that depending on the chemicals used for erasure and the ink used for writing, the original writing will become visible after the lapse of a period ranging from one day to many years. On the basis of this opinion, both the parties proceeded on the basis that the original writing, which was admittedly erased by using chemicals, started becoming visible after a lapse of time and till then for naked eyes of all the employees of the Banks in this case, the original writing would not have been visible and only the altered writings would have been visible. So, the evidence of this witness has established the fact

that originally the two drafts were issued only for Rs. 20 and Rs. 30 respectively, in the name of B. K. Shetty and B. Ramaswani and they have been materially altered in the: name of one S. Ramanathan and the amount have been altered as Rs. 15000 and Rs. 21000 respectively. It is also not in dispute that the plaintiff Bank has paid these amounts on the basis of the altered drafts with the protective endorsement of the defendant bank.

10. Mr. Shama Rao, learned counsel appearing for the appellant laid much stress on the fact that the original challan submitted by the purchasers and the applicants of the drafts Exs., A. 7 and A. 9, which according to him are the two basic documents which are very important, would reveal the naked truth in this case. He submits that the registers filed by the Banks in this case are only a self serving documents and no reliance can be placed on them as the concerned people in the Banks could have fabricated the entries in order to save their skin. He has come forward with a theory that in the absence of the original challans showing the payment of Rs. 20 and Rs. 30 respectively, it is not possible to come to a conclusion that the figures in the drafts have been subsequently altered after they had passed out of the hands of the concerned Bank. He has made elaborate submissions to demonstrate how such a material alteration could have taken place within the Bank premises concerned without his knowledge of either the purchasers or the payee of the drafts. The theory put forward on behalf of the defendant is that it is quite possible that the original purchasers of the drafts Exs. A. 7 and A. 9 could have actually paid the sum of Rs. 15000 and Rs. 21000 respectively and wanted the drafts in the names of the persons named by them, and that somebody in the Ambur branch and Vaniyambadi branch of the Indian Bank, who were in charge of the issue of the drafts, could have tampered with the drafts by making the entries as if the drafts were issued for Rs. 20, Rs. 30 respectively, and after getting the signatures of the concerned officer of the Bank, the figures Rs. 20 and Rs. 30 could have been erased and the figures Rs. 15000 and Rs. 21000 could have been written and then delivered to the parties who have applied for the issue of the drafts. To put it in other words, these material alterations could have been made by the employees of the concerned branches of the plaintiff bank without the

knowledge of the parties ;concerned. The persons, who were responsible for the same, would have misappropriated the sum of Rs. 15000 and

Rs. 2 1000 which were originally paid by the purchasers of Exs.A. 7 and A. 9. According to the learned counsel, this possibility of tampering the

drafts has not been overruled by the plaintiff bank by the production of the ,original challans. In the absence of the challans, it is not possible for the

plaintiff Bank to assement that the sum of Rs. 15000 and Rs. 21000 were not received by the respective branches. According to him, there are

certain "intrinsic evidence to prove the case of the. defendant in this regard. It is argued that when the defendant insisted on the production of the

original challans, the plaintiff was bound to produce the same to disprove the defence .raised by the defendant. No explanation was offered by the

plaintiff or the non-production of the said challans. In such circumstances, an adverse inference has to be drawn against the plaintiff on this aspect.

Apart from that, the purchasers of the two drafts have not been traced and examined as witnesses by the plaintiff. In the absence. of the challans or

"the evidence of the purchasers, it is not i possible to say when the fabrication had taken i place. There is enough material to show that the

alteration must have taken place in the Bank itself. Learned counsel subnuds that !-P.W. I has categorically admitted that the rubber stamp

containing the date was put in Ex.A. 7 in Ambur branch itself. The date 27-3-1974, was originally written in ink on which this rubber stamp was

affixed. It was elicited from the expert P.W. 6 that if chemical lad been used for erasure of the writings, the date stamp found on Ex. A. 7 also

should have been affected, However, it is seen that the rubber stamp has not been altered in any manner and therefore according to-the, learned

counsel, somebody in the Ambur branch of the Bank should have put the date, stamp after the erasure of the original writing Further, it was

contended that the original writings and the altered writings found in Exs.A. 7 and A. 9 have not been, compared to trace the author of these

writings. Apart from that, the, writings of the concerned Bank staff also should have been compared with the disputed writings. We do not find any

force in the said contention, since the failure to make some such comparison would not automatically prove that the drafts were materially altered

by the Bank staff and not "by any one else. Further, the learned counsel attacked the demand draft -register Ex.A. 8 of Ambur branch on the

ground that it had not been maintained in the regular course of business and a close scrutiny of the said register would reveal that the entries, have

been made to suit their own convenience. He pointed out that in page 32 of the said register, which contains the relevant entry marked as Ex.A.

8(a) relating to the draft Ex.A. 7, the name of one Ranganathan is written in capital letters. It was pointed out that not true is written in capital

letters. According to him, this indicates that these entries must have come into existence under suspicious circumstances indicating that there was

some attempt to manipulate the records. It is no doubt true that all other names are written in ordinary letters. But by this alone, we cannot say

that Ex. A. 8 is a fabricated register. We have carefully gone through the several entries in the various pages of the said register and we find that

they ought to have been made in the regular course of business and not entered at a later point of time. Therefore, this aspect of the matter also

does not advance the case of the appellant in any manner.

11. Then the learned counsel pointed out that Exs. A. 11 and A. 14, which are the letters written to Ambur branch and Vaniyambadi branch, on

28-3-1974 and 27-5-1974 respectively do not contain any reference number and they were written to the said branches requesting them to send

the duplicate advices of the usual protection advice regarding the said two drafts. He referred to Ex. A. 15 which was a letter sent

by the Vaniyambadi branch to Harbour branch on 8-6-1974, and that it does not contain any reference to the letters Exs. A. 11 and A. 14.

Reliance was placed on Ex. A. 1 letter of the Reconciliation department of the Head Office of the Indian Bank. This also shows that the plaintiff

Bank was not aware of the payment for these drafts before 11-6-1984. Relying on Exs. A. 1 and A. 15 learned counsel submits that Exs. A. 11

and A. 14 must have come into existence subsequently. On a perusal of these documents, we are unable to come to the said conclusion. Merely

because, there is no corresponding reference in these letters, it cannot be stated that they are all fabricated documents. The Bank has committed

one other mistake in Ex. B. 2 wherein the name of the payee was mentioned as Sami Chetti by the Harbour branch of the Indian Bank. The

witnesses examined in this case are not able to explain how the name of Sami Chetti came to be mentioned in the said letter. As the name of B. K.

Shetti is clearly found in , Exs.A.6 and A.7, the name mentioned in Ex. B2 must be a bona fide mistake. On a consideration of these materials we

find that such a material alteration could not have been done in the Ambur branch and Vaniyambadi branch, as, during the process of issuing the

drafts, the matter is being dealt with by a number of persons in the Bank and unless all of them colluded " together and joined in the scheme the

alterations could not have been done within the Bank campus itself.

Apart from that, the registers maintained in the regular course of business how the receipt of actual amount by the Bank for which drafts were

issued in the names of the respective parties. However, when the officials of the Bank branches were examined as witnesses, no suggestion has

been put to them on this aspect.

12. In the background of the available evidence in this case, we have to find out whether the defendant-bank is liable to pay the suit amount.

Learned counsel for the appellant strenuously "argued that the defendant is protected by Ss. 131 and 131-A of the Negotiable Instruments Act. S.

131 of the Act reads as follows-

Non-liability of banker receiving payment of cheques: banker who has in good faith and without negligence received payment for a customer of a

cheque crossed generally or specifically 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 a payment.

(Explanation omitted).

Sec. 131-A of the Act reads as follows: -

Application of chapter to drafts: The, provision of this chapter shall apply to any draft, as defined in S. 85-A as if the draft were a cheque.

It is no doubt true that it is a salient provision made with a view to protect the interests of the banks in their day-to-day activities. In order to attract

the application of the section and to avail of the protection given by it, the conditions imposed by the section must be strictly complied with

otherwise the banker's liability for receiving payment of a customer with a defective title in the cheque will remain unaffected. One of the important

ingredients of the said provision is that the banker must have received the payment in good faith and without negligence. The standard by which the

absence or otherwise of a negligence is to be determined by reference to the practice of reasonable men carrying on the business of bankers and

endeavouring to do so in such a manner as may be calculated to protect themselves and others against fraud. Learned counsel for the -appellant

submits that negligence is essentially a question of fact and it must depend upon the circumstances of each case whether negligence has been

proved or not.

13. Learned counsel for the appellant argued that the standard of care of a banker in collecting cheques cannot be put at a very high pedestal since

there cannot be a rule that a Bank should not collect cheques without a thorough enquiry as to the history of such cheques. According to him, if a

bank has acted without apparent negligence, he could discharge his liability and his action must be. protected under Sec. 131 of the Negotiable

Instruments Act. In support of his contention, learned counsel relied on the decision reported in Commr. of Taxation v. E. S. & A. Bank, AIR

1920 PC 88, wherein the following principle was laid-

Negligence is a question of fact and each case must be decided on its own merits. And the standard of care of a banker in collecting cheques is

not that of an individual invited to purchase or cash such cheques for it is no part of the business of ordinary practice of individuals to cash cheques,

while it is the business and ordinary practice of Bank to collect cheques.

To lay down that no cheque should be collected without a thorough enquiry as to the history of the cheque would render banking business

impossible and that the fact in this case of a cheque being paid into the account, the next day after the account was opened being in no way unusual

was not such" as to put the Bank on enquiry and there was no negligence on the part of the bank in collecting that cheque.

This principle was followed in the decision reported in Bapulal Prenichand v. Nath Bank Ltd., ILR (1947) Born 236 : AIR 1946 Born 482,

wherein it was held that under Sec. 131 of the Negotiable Instruments Act, if a banker in good faith and without negligence received payment for a

customer of a cheque crossed generally or specially to himself, then in case the title to the cheque proved defective the bank was not liable to the

true owner by reason only of having received such payment and that the negligence with which the court was concerned was not in opening the

account but in collecting the cheque that case, on the facts of the case, the Court found that there was no note of warning or alarm on the cheque

itself and therefore the bank could not be held to be negligent in collecting the amount of the cheque which on the face of it did not arouse any

suspicion. Then the learned counsel for the appellant -submitted that the opening of the account by the said Ramanathan with the defendant bank

by itself cannot amount to negligence unless it is shown that it was done as part of the fraud. In this case, the Branch of the defendant bank was

opened at Thiagarayanagar "on 18-3-1974.and the account was opened on 21-3-1971 on which date the disputed drafts did not come into

existence. In support of his connections, he relied on the decision of this Court reported in Bharat Bank Ltd., Madras Vs. Kishinchand Chellaram,

, wherein it was held as follows-

The question whether the Bank had acted with negligence in the opening of the account would, however, be relevant under S. 131 to this extent

that, if the opening of the account and the deposit of the cheque were really part of the scheme, as where the account itself was opened with the

cheque in question for where it was put into the account so shortly, after the opening of the account as to lead to the inference that it was part of it,

then negligence in the matter of opening the, account must be treated as negligence in the matter of realisation of the cheque.

14. The true legal position that emerges" regarding the liability of a banker and the protection available under S. 131 of the Negotiable Instruments

Act, from the various decisions of the Privy Council and the courts in India are as follows: - S. 131 of the Negotiable Instruments Act does not

provide an absolute immunity to the collecting banker, and unless he can bring himself within the conditions formulated by this section, he is left to

his common law liability for conversion or for money had and received, in the event of the person from whom he takes the cheque having no title or

a defective title. Since the statutory duty contemplated under this section takes the form of a qualified immunity from a strict liability at common

law, the onus of showing that he did take such reasonable care lies upon the defendant banker. Where the customer is in possession of the cheque

at the time of delivery for collection, and appears upon the face of it to be the "holder" i.e., the payee or the indorsee or the bearer, the bank is

entitled to assume the customer is the owner of the cheque unless there are facts which are known, or ought to be known, to the banker which would cause a reasonable banker to suspect that the customer is not the true owner. The essential condition, that is, the duty to take care is purely one imposed by the statute on the Banker for the benefit of the true owner, as between whom there is no contractual relation giving rise to a duty. It is the price which the banker pays for the protection afforded by the statute. It is therefore from the- stand point of the true owner, that the question of good faith and absence of negligence has to be considered. Broadly speaking, the banker must exercise the same care and forethought in the interests of the true owner with regard to the cheques paid in by the customer, as a reasonable businessman would bring to bear on similar business of his own. It is no excuse to say that it is probable that the exercise of care would not have enabled him to discover the defective title of the customer, for any person who does not exercise reasonable care is outside the section altogether. The negligence must relate to the collection of the cheque and not to any antecedent act, such as opening an account, though circumstances connected with it may shed light on the question of negligence. Thus if a customer opens an account with cash and there is nothing suspicious about the manner in which the account is opened, the fact that the bank made no enquiries about the customer would not disentitle the Bank to protection under the section. But this omission may, however, be taken with other facts and circumstances, for the purpose of weighing the question whether the Bank has proved that it has not been negligent. Hence, where the account, of a customer was opened without obtaining a reference and without any enquiry and the manner in which the account was operated upon was peculiar, and the name as indorsed on the demand draft collected by the bank did not tally with the name of the customer as given in the application form and the specimen signature, it was held, taking all the circumstances into account that the bank failed to prove that it was"-not guilty of negligence. The question whether the Bank had acted with negligence in the opening of the account will, however, be relevant under Sec. 131 to this extent that if the opening of the account and the deposit of the cheque are really part of one scheme, as where the account itself is opened with the cheque, in question or when it is put into accounts, so shortly after, the opening of the account as to add to the

inference that it is part of it, then negligence in the matter of opening the account must be treated as negligence in the matter of realisation of the

cheque. It might happen that even where an account is opened without a proper enquiry it might continue to be operative upon satisfactorily for

some time, but long afterwards a cheque might be put into the account which might turn out to be forged. In such a case it cannot be laid down that as

an inexorable rule that negligence in the opening of an account must be treated as negligence in the receipt of the amount of the cheque. The

question would then be one of fact as to how far two stages can be regarded as so intimately associated as to be considered as one transaction.

The question should, however, in strictness be determined separately with regard to the collection of each cheque. The duty of care owed by the

banker to the true owner of the cheque does not arise until the cheque is delivered to him, by his customer. It is then, and then only, that any duty

to make inquiries can arise. What enquiries the Banker should make, and what facts are sufficient to cause him reasonably to suspect that the

customer is not the true owner, must depend upon current banking practice and change as that practice changes. Cases decided 30 years ago,

when the use by the general public of banking facilities was much less widespread, may not be a reliable guide to what duty of a careful banker is

in relation to enquiries, and as to facts which should give rise to suspicion is today. If the bank has fallen short of its own requirements of care as

revealed to its written instructions, it would go a long way to establish negligence; it cannot be taken always as a universal rule. Conversely, proof

by the Bank that its rules had been observed by its officers "would not be an answer to a claim in conversion though that would be a relevant

factor to show that the Bank had acted without negligence. The principle which should guide the Court in deciding the question of bank negligence

are four in number: - (1) The standard of care required of bankers is that to be derived from the ordinary practice of bankers; (2) The standard of

care required of bankers does not include the duty to subject an account to microscopic examination. (3) In considering, whether a Bank has

been negligent in receiving a cheque and collecting the money for it, it has presumably to scrutinise the circumstances in which a bank accepts a

new customer and opens a new account and (4) The onus is upon the Bank to show that it acted without negligence.

15. Bearing these principles in mind, we have to see whether the appellant Bank had acted without negligence and good faith in acting as a banker

for the said S. Ramanathan and in encashing the drafts presented by him and paying over the proceeds to him subsequently. The evidence

adduced on behalf of the defendant bank reveals that they did not even verify at the time of the opening of the account that a person by name S.

Ramanathan was in existence. The way in which the introduction was done and the account was opened in the name of the said, S. Ramanathan

clearly indicates the total lack of diligence on the part of the defendant bank. As we have already seen the T. Nagar branch was opened only on

18-3-1974 and the account was opened in the name of Ramanathan shortly thereafter on 21-3-1974. It was urged by the learned counsel for

the appellant that the address given by the said Ramanathan shows that he was residing very close-by to the Bank and he was introduced "by one

of the customers of the defendant bank, and therefore, there was no ground to hold that the bank had acted negligently in the matter of the

opening of the account. On the other hand, the evidence of D.W., who was the Branch Manager in Mambalam branch during the relevant time,

show that the bank did not even care to make a semblance of an enquiry about the antecedents of the said Ramanathan in whose name the

account was opened. According to him one Arunachalam of electronic traders introduced the said Ramanathan for opening an account and that he

was a coconut merchant. It was admitted by him that at the time of opening the accounts, they did not go to his place to verify his place of business

or residence and whether he was a coconut merchant or not. It is claimed that they have simply believed the words of the said Arunachalam

who had introduced him. It is interesting to note that even the said Arunachalam had no personal account, of his own, but he was only operating

the accounts of the concern by name, Electronic Traders. There is no evidence to show that the said Electronic Traders were having substantial

transactions with the defendant Bank. The said Arunachalam was operating the accounts as the agent

of Electronic traders which is a proprietary concern and the proprietrix lady. The following passage from his evidence is, worthy of notice: -

I cannot remember if we have given any credit facility for the electronic traders. I do not know if he had dealings in lakhs or in thousands. I do not

remember if Arunczliain had any personal account in our Bank. i Arunachalam affixed this seal of Electronic Traders and signed as their agent at the time ~of introduction. Elecronic Trader is a proprietor concern.-It was a lady., I do not "remember her name. That proprietrix did not come, personally to introduce Ramanathan. I, do not contact her to verify about Ramanathan. Subsequent to Ex. B2, I did not go to the address given by Ramanathan since I heard that news that he died. I do not remember what kind of enquiries I made. I do not remember the name of the persons who told me that Ramanathan was dead. I did not make enquiries about the financial position of Ramanathan. Arunachalani told me that Ramanathan was coconut merchant. After the incident we could not contact: Arunachalam also since he had stopped doing bus-mess.

The above admission made by D.W. 1 demonstrate that the accounts were opened by the banker in very casual manner without realising their duties or obligations in carrying on their banking activities Perhaps, they were ""anxious to open as many accounts as possible since the Branch was opened only a few days before the disputed drafts were presented by the said Ramanathan. It is apparent that even the said Electronic Traders could have opened ,their accounts only on 18-3-1974, when the branch was opened or shortly thereafter. .~D.W. I had not known previously neither ""Arunachalain nor the proprietrix of the 1 Electronic Traders or S. Ranuinathan, before ""the accounts were opened. In these circumstances, the defendant Bank should, have made enquires at; he time of opening of the accounts. Even otherwise, when the two drafts for considerable amounts were deposited by the said Rainanathan for encashment within a short time after the, opening of the accounts, the defendant bank should have entertained a reasonable suspicim and verified the identity of the said S. Ramanathan. It is surprising to note that ,even after the defendant bank coming to "know about the conversion of the drafts, they could not trace either of the saidArunschalam or Ramanathan. Learned counsel for the appellant submits that there were absolutely no grounds for suspecting the bona fides of the said Ramanathen when he opened the account with the defendant Bank, since the account was opened with deposit in cash. After the two drafts were encashed by the defendant Bank and credited in his account, "he had withdrawn the amounts under various cheques. As there was no attempt on his part to draw the amount immediately in a lump

sum, there was no reason for the Bank officials to suspect anything about the said transaction. We are unable to appreciate these contentions, since we have found that in the very opening of the account, the defendant: bank did not care to take over even the elements precaution. Moreover, excepting the deposit of the small amount at the time of opening the accounts, there were no " other transactions before these drafts were deposited.

16. One other point that was raised by the learned counsel for the appellant is that the defendant bank alone is not responsible in this case, as the paying bank which are the. Branches of the plaintiff bank are also not absolved of their responsibility in paying the amounts shown in the converted draft they have not taken proper care in issuing the drafts and paying the amounts due under them. Usually the drafts are written in such a way as there are carbon impressions on the bank of the drafts, ensuring safety from forgery. Apart from that, the, drafts are. Subjected to infrared rays for detecting forgery. Admittedly, these precautions have not been taken by the paying banks and, therefore, they have substantially contributed to the negligence, if any, on the part of the defendant bank. The plea of contributory negligence cannot be invoked in a case of this nature. As held in the decision in Kanyalal, Thankurdas v. Bombay Cycle Importing Co. (1972) 1 Mad U412 and in Bapulal Premchand Vs. The Nath Bank, Ltd., , the contributory negligence on the part of the true owner can be no ;answer by the person, who converts the. Article that he should be let off from his liability because of the negligence of the true owner. The true position. regarding,, the responsibility of a banker in opening the accounts and regarding the plea, of contributory negligence by the paying banks has been elaborately considered by a Bench" of this court J6nsisting of Natrajan and~ Padmanabhan JA in the decision reported in Indian Bank Vs. Catholic Syrian Bank Ltd., , and they have held as follows: -

Where a bank allowed a customer to open an account on the recommendation of a customer who could not be said to be respectable and without testing the credentials -of the person desirous of opening the accounts and sent a crossed demand draft on another bank for a big amount of new customer put into account only a few days after opening of the account for realisation and in consequence, the Bank on which the draft was

drawn was put to loss as the draft was a forged one, the Bank opening the account could not be considered to have acted without negligence even

if it might have acted in good faith. Consequently, the Bank was not entitled to benefit of Ss. 131 and 131-A. In such a case, the Bank which

honoured the draft could not be said to be guilty of contributory negligence merely because it failed to make enquires from its branch which issued

the draft before the same was cleared and the amount thereon was credited to the account of the new customer and he withdrew it.

We are in respectful agreement with the reasonings of the learned Judges in the said decision. Therefore, we are of the opinion that the plaintiff

bank has not acted negligently in the matter of issuing drafts and making payment for the same. It is to be noted in this connection that the paying

Banks mainly acted on the protective, endorsement made by the defendant bank who were acting on behalf of its customer. Therefore, there was

no scope for the paying banks to make an enquiry about the genuineness of the drafts at the time of payment unless the forgery is apparent on the

face of the drafts themselves or there are other patent facts showing forgery. However, in this case, it is admitted that at the time of payment, the

original writing in the drafts were not visible, for a naked eye and that the same became visible only sometime later. In these circumstances, the

paying banks were justified in making payment for the drafts. But there is one aspect which has to be noticed in this connection. The paying banks

were alia, not vigilant in detecting the conversion of the drafts at the earliest point of time. If only they had verified the reconciliation, statement

earlier, they could have detected the conversion without much delay. We are not able to appreciate the manner in which the Branches at Ambur

and Vinaymbadi have acted in dealing with the payments for these drafts. There is absolutely no explanation why the conversion was not detected

for nearly 65 days when the banks are expected to verify the reconciliation statements at the earliest point of time. This is indicated by us solely

with a view to warn the banks so that they may avoid recurrence of similar forgeries in future. These points are therefore answered against the

appellant.

17. We find there are no merits in the appeal and we, therefore, confirm the findings of the trial court and dismiss this appeal. In view of the fact

that the respondent Bank was not vigilant in not noticing the conversion of the drafts within a reasonable time and considering the peculiar facts of

the present case, we direct each party to bear their respective costs in this appeal.

18. Appeal dismissed.