BANKER'S NEGLIGENCE AND LAW RELATING TO TRAVELLERS' CHEQUES

THE LAW relating to legal liability of bankers does not often figure in our courts, and in such litigation as arises in India, they usually follow English rulings. Sometimes, however, there do arise interesting questions of a novel character on which there is not much foreign authority. The decision of such questions obviously must rest on first principles. However, once the principle is laid down in a seminal judgment, it itself becomes a source of fresh law. Exactly this was the situation that arose in *Dena Bank* v. *K.K. Alex*[1] before the Kerala High Court.

The case involved a question of importance relating to travellers' cheques. The plaintiff, in 1981, purchased such cheques worth Rs. 19,000 from defendant Dena Bank relying on its advertisement that the cheques afforded complete protection against theft or loss. He proceeded to Bangalore and stayed in a hotel for about a week. One day he went out of his hotel room after locking it, leaving behind his suitcase containing the cheques. On his return at about 2 p.m. he found that they were missing. He reported the loss to the J.C. Road branch of the bank and also to the police. The branch manager informed him that the loss would be reported immediately to the Calicut branch and to the head office. The plaintiff himself informed that branch personally after three days and gave a written request for stopping payment. He also wrote for the refund of the amount. But the bank pleaded that the cheques were lost due to his negligence and that it was not liable to refund the amount. It appears that before the bank could inform all its branches, cheques worth Rs.14,000 were encashed in the ordinary course of business from the Salem and Tiruchy branches and other cheques were presented and encashed through the Punjab National Bank.

The plaintiff sued the bank for recovery of a sum of Rs. 20,840 together with interest. The question arose whether the bank was liable in the circumstances. An important fact which came out at the trial was that, on a comparison of the signatures on the cheques, there was some difference in the two signatures. The difference was prominent and, if the concerned paying officers had taken due care and caution by comparing the signatures, they would not have been encashed. In other words, the payment by the various branches was entirely due to negligence on the part of the staff, the officers concerned not having verified properly the signatures at the time of payment. The payment was, therefore, not in the ordinary course of business. On a comparison of the relevant signatures on the various cheques, the trial court found them on about 20 cheques to be substantially

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1. A.I.R. 1987 Ker. 70.

dissimilar and hence the payments were not made in the ordinary course of business. Accordingly, the suit was decreed for Rs.10,000 representing the amount of those cheques.

The officers, appearing in evidence on behalf of the bank, themselves deposed that the encashing officer was bound to scrutinise the signatures on cheques. In this case, there was a vast difference in the signatures on various cheques and the payment, notwithstanding the difference, was not explained. In the circumstances, the trial court's finding about negligence was upheld by the High Court. A significant omission on the part of the bank was that it had not examined as a witness the officer who passed the cheques in question.

As to the legal principle applicable, the High Court quoted from a well known book on banking law.[2] The position has been thus stated in the book :

> *Travellers' cheques.* Travellers' cheques bear a striking resemblance to circular notes, with the exception that they do not require any letter of indication. Like the circular notes, they are generally drawn for certain round sums and are cashable at the current exchange rate. At the time of the issue of a traveller's cheque, its holder signs it at the place appointed for the purpose and he has only *to sign it again in the presence of the banker to whom he presents it for payment.* This signature must correspond with the signature already on the cheque, which serves to identify the holder.[3]

Applying the above principle to the facts of the case, the High Court emphasised that, as stressed in the words underlined above, the bank must insist on the holder signing the cheques again in the presence of the paying banker and the signature must correspond to the signature already on that cheque. Apparently, this had not been done in the present case and the court had no difficulty in holding that the bank was liable. The appeal was accordingly dismissed.

It may be pointed out that the case was decided on first principles and it was not necessary to cite any earlier decision. It may also be proper to mention that it is a generally recognised principle in banking law that even ordinary cheques cannot be paid without the exercise of proper care and caution. Of course, proper care has to be exercised by the person drawing a cheque on a bank and also by the payee. But in the present case, it is somewhat surprising that the bank took in defence the plea that the owner of the travellers' cheques had been "negligent." After all, no person can be expected to secure in the safest custody the cheques in his

2. M.L. Tannan, *Banking Law and Practice in India* (16th ed. 1977)
3. *Supra* note 1 at 71, quoting *id* at 508. (Emphasis added by the court)
4. *Supra* note 1 at 72

possession in an absolute manner. What the law requires is merely reasonable care. On the part of the bank also, the law expects that it can make payment only of those cheques where the signature tallies with the authorised signature. The customer in this case had locked the room and gone out and it is difficult to see what more precautions he should have taken to ensure protection against theft or loss of the cheques.

Incidentally, it is not clear from the facts as to why the customer did not make any attempt to recover from the hotel. At common law, the liability of innkeepers for the loss of valuables belonging to inmates of the inns is absolute. They are liable for such loss even without proof of negligence. This rule came into existence in England at a time when robbery on highways was rather rampant and a wide protection was needed for travellers who would put up for the night in the inns situated on the road. Such a stringent rule of liability may not be needed today, but liability for negligence definitely exists on the part of hoteliers, even if the ancient rule of absolute liability may not be followed. On the facts, it will appear that the hotel was *prima facie* negligent since the room was locked by the customer and it had been opened obviously by an unauthorised person. The key of the room is normally entrusted only to employees of the hotel and *prima facie* the hotel should, therefore, be deemed to have been negligent in the circumstances. True that in many hotels, it is the practice to insert a clause in the receipt given for booking the room initially that the hotel would not be liable for the loss of cash and valuables not kept in its safe custody. However, it is highly doubtful whether such an exclusion clause can have any legal validity or be operative so as to totally efface liability for negligence. In the absence of specific statutory provision expanding or restricting liability for negligence, courts would apply notions of justice, equity and good conscience, and it is possible that Indian courts in the present day legal climate would not permit such a restrictive clause to be operative.

Finally, the judgment shows the need for discussion and debate on questions of the law relating to bankers (particularly, travellers' cheques) and the law relating to legal liability of hotels for the loss of belongings of inmates as well as for bodily injuries and other harm caused to them during their stay or in consequence of their stay in hotels.

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