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author of the publication it clearly follows that the general presumption that a man must be held to intend the natural consequences of his act applies.

I agree in dismissing this application.

NIAMAT-ULLAH, J.:—I concur.

BY THE COURT:—The application is dismissed, and the applicant must pay the costs of the respondent which we assess at Rs.200 in addition to the costs of translation and printing.

## APPELLATE CIVIL

*Before Mr. Justice Harries and Mr. Justice Rachhpal Singh*

1936 *January*, 20

MANGALSEN JAIDEO PRASAD (DEFENDANT) *v.* GANESHI LAL AND OTHERS (PLAINTIFFS)*

*Shah jog hundi—Negotiable Instruments Act (XXVI of 1881), sections 1, 5, 13—Bill of exchange—Negotiable instrument outside the Act—Mercantile usage—Liability of indorser to indorsee.*

A Shah jog hundi is not a bill of exchange as defined in section 5 of the Negotiable Instruments Act, as it is not an order directing the drawee to pay either to a certain person named, or to the bearer of the instrument. If is, therefore, not a negotiable instrument as defined in section 13 of the Act.

The Negotiable Instruments Act, however, deals with only three specified classes of negotiable instruments, namely promissory notes, bills of exchange and cheques, as defined in the Act, and it does not deal with other kinds of negotiable instruments. Section 1 of the Act provides that the Act does not affect any local usage relating to any instrument in an oriental language. Such an instrument may therefore be a negotiable instrument independently of the definitions of the Negotiable Instruments Act, if the character of negotiability has been impressed on it by established mercantile usage.

A Shah jog hundi has been treated and recognized by Indian custom and law as a negotiable instrument, although it does not come within the definition of a bill of exchange in the Act; and it being a negotiable instrument, the general provisions of

*Second Appeal No. 1370 of 1933, from a decree of Ganga Nath, District Judge of Aligarh, dated the 16th of August, 1933, confirming a decree of Y. S. Gahlaut, Munsif of Koil, dated the 7th of January, 1932.

the Act will be applied and an indorser is liable to the indorsee in case of the drawee's failure.

Messrs. *A. Sanyal* and *C. B. Agarwal,* for the appellant.

Messrs. *Panna Lal* and *Mukhtar Ahmad,* for the respondents.

HARRIES and RACHHPAL SINGH, JJ.:—These are three defendants' second appeals arising out of three separate suits to recover certain sums of money. The points in issue between the parties in all the three suits are exactly alike; we therefore propose to dispose of them by one judgment.

A firm styled "Mohan Lal Babu Lal" of Aligarh drew three hundis upon themselves. The form of these hundis was as follows:

"To Bhai Mohan Lal Babu Lal of the good and prosperous place of Aligarh, from Mohan Lal Babu Lal of Aligarh, whose compliments please accept.

"We draw one hundi on ourselves for Rs.1,000 (in words, one thousand), double of Rs.500, payable after sixty days from the date . . . here deposited with Bhai Mangal Sen Jaideo Prasad.

"Please pay to a 'Shah' after making usual inquiries in accordance with the usage of the market."

The three hundis in suit were endorsed by the firm of Mangal Sen Jaideo Prasad, the defendants, as follows: "This hundi is sold to Hoti Lal Babu Lal by Mangal Sen Jaideo Prasad."

The plaintiffs, in whose favour the hundis were endorsed by the defendants' firm, presented them for payment after they had fallen due, to the firm of "Mohan Lal Babu Lal" who were, as we have stated above, both drawers and drawees. This firm, however, became insolvent and was unable to meet the demand. Thereupon the plaintiffs endorsees demanded payment from the defendants endorsers; but they did not pay the amount due. The plaintiffs thereupon instituted three suits to recover the amount due in respect of these three

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hundis against the defendants. It was alleged by the plaintiffs that the defendants' firm had received full consideration when they endorsed the hundis in plaintiffs' favour.

The defendants pleaded that they had sold the hundis without receiving any consideration and that the hundis in question were not negotiable instruments and for these reasons they were not liable. Some other pleas were taken but it is not necessary to refer to them.

Both the courts below found that the endorsements made by the defendants' firm in favour of the plaintiffs' firm were with consideration and that the hundis were negotiable instruments within the definition of the Negotiable Instruments Act, and that therefore the defendants endorsers were liable to the endorsees in respect of the amount due on the aforesaid three hundis and the suits were accordingly decreed. The defendants have preferred three appeals against the decision of the lower appellate court.

The first question for consideration is as to whether or not the hundis in question are negotiable instruments as defined in the Negotiable Instruments Act (Act XXVI of 1881).

It is common ground between the parties that the hundis are what is commonly known as "Shah jog hundis", i.e., a hundi payable only to a respectable holder, that is a man of worth and substance known in the bazar.

The case of the plaintiffs is that these hundis are bills of exchange. Section 5 of the Negotiable Instruments Act defines that "A bill of exchange is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument."

Keeping in view this definition, we proceed to consider whether the hundis before us have all the ingredients

of a bill of exchange. A bill of exchange is an instrument in writing. The hundi before us is such an instrument. The second condition is that it contains an unconditional direction or order. This element is wanting in the hundis before us. Thirdly it must be signed by the maker. In the case before us, it is signed by the maker. Fourthly it must direct a certain person to pay a certain sum of money. The hundis direct the drawees (who in the case before us happen to be the drawers themselves) to pay a certain sum of money. In the present case there is a direction to pay a certain sum of money. The fifth condition is that the money should be paid only to, or to the order of, a certain person, or to the bearer of the instrument. This element is wanting in the hundis before us. Thus the ingredients wanting in the hundis before us are two. They do not direct that the money should be paid to the bearer of the instrument. They do not further direct payment to be made to a named person. The direction given is that the payment is to be made to a "Shah". If the directions in the hundis had been that they should be paid to a named person or to the bearer of the instrument, then they would have come within the definition of a "bill of exchange" as given in section 5 of the Negotiable Instruments Act. In the hundis before us there is no direction that the payment is to be made to the bearer. Nor is there any direction that the payment is to be made to a certain person. Before the drawee makes payment he has to satisfy himself that the person demanding payment is a "Shah". If the drawee is satisfied that the person demanding payment is not a Shah, then he is entitled to withhold the payment. If the drawee, without making due inquiries, makes payment to a person alleging himself to be a Shah, but who subsequently is proved not to be a Shah, then the drawer will not be liable to the drawee. Where the drawer and the drawee happen to be different persons, the drawer will be justified in saying to the drawee who demands

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payment "I gave you an order to make payment to a Shah; but you made payment to a person who is not a Shah and therefore I am not liable to reimburse you". It is necessary that a bill of exchange ought to specify to whom the sum is payable, for in no other way can the drawee, if he accepts it, know to whom he may properly pay it so as to discharge himself from all further liability. Now if the bill is payable to bearer, the drawee is directed to pay to the bearer and as soon as the drawee pays the amount mentioned in the bill to the bearer his liability to the drawer ceases. But where a bill is payable to a certain person then it must show on the face of it as to who that person is. Now, one way is to mention the name of the payee. But it is not absolutely necessary. All that is necessary is that the bill must point out with certainty the party who is to receive the money. Now in the case of Shah jog hundi the drawee is directed to pay to a Shah after making inquiries and after satisfying himself that he is a Shah. So it can not be said that a "Shah jog hundi" is a bill of exchange, for the simple reason that it is not an order directing the drawee to pay to a certain person named or to a person whose identity is sufficiently indicated.

We would like to point out that in *Kannayalal Bhoya* v. *Balaram Paramasukdoss* (1) an opinion was expressed that "Shah jog hundi" was a negotiable instrument within the definition in section 13, clause (2) of the Negotiable Instruments Act of 1881, as amended by the Negotiable Instruments Amendment Act of 1914. In that case a hundi was payable in the alternative to one of the several payees. The learned CHIEF JUSTICE of the Madras High Court made the following observations which are to be found at page 483 of the report: "As regards four of these documents, in my judgment the documents in question were negotiable instruments; I think they come directly within the definition in section 13, clause (2) of the Negotiable Instruments Act

(1) (1922) 43 M.L.J., 480.

of 1881, as amended by the Negotiable Instruments Act of 1914, as being payable in the alternative to one of several payees. But, whether this is right or not, they are in my judgment still covered by rule 63A of the Original Side Rules." COUTTS TROTTER, J., in his judgment at page 485 observes as follows: "In the next place I am unable to follow the order and judgment which appear to hold that a Shah jog hundi of this form is not a negotiable instrument. It seems to me that there are many reasons for supposing that it is. I am perfectly content to take it that the words payable to any 'Shah' (which was translated, 'a respectable person') are so vague and indefinite as to be incapable of enforcement in a court of law and, therefore, the instrument stands as payable to Khannya Lalji, the drawee." It will be seen that though an opinion was expressed that a "Shah jog hundi" is a negotiable instrument within the definition in section 13, clause (2) of the Negotiable Instruments Act, yet the point was not definitely decided, because the instrument in question there came within rule 63A of the Original Side Rules, and could, therefore, be treated as a negotiable instrument.

Learned counsel appearing for the appellant relied before us on two rulings of the Calcutta High Court: *Assaram* v. *Kesri Chand* (1) and *Keshari Chand* v. *Asharam Mahato* (2). In our opinion, these cases do not help us in deciding the question before us. In both these cases it was held that a "Shah jog hundi" was not a bill of exchange as it was only payable to a respectable holder and was therefore not equivalent to a hundi payable to a bearer. It has to be borne in mind that both these cases were decided in the year 1912 and the decision was arrived at with reference to the definition of negotiable instrument, as given in Act XXVI of 1881. The learned Judges in view of the definition held that as the Shah jog hundis before them were payable to certain persons and not to order or to bearer

(1) (1912) 33 Indian Cases, 247. (2) (1915) 33 Indian Cases, 250.

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they were not negotiable instruments. But since then the definition of negotiable instruments has been changed by the enactment of an Amendment Act (Act VIII of 1919). Before the Act VIII of 1919 it was necessary, in order to make the instrument negotiable, to insert operative words of negotiability, such as "order" or "bearer" or any other term expressing the intention on the part of the drawer or maker to render it negotiable; an instrument drawn payable to a specified person was said to be not negotiable: See on this point *Jetha Parkha* v. *Ramchandra Vithoba* (1). Under the definition of a negotiable instrument, after the enactment of the Amendment Act (Act VIII of 1919), a bill payable to a particular person containing no words prohibiting transfer or indicating an intention that it shall not be transferable is a bill payable to order: See *Hans Raj* v. *Lachmi Narain* (2). It would, therefore, appear that cases decided with reference to the definition of a negotiable instrument as given in the Negotiable Instruments Act (Act XXVI of 1881) before the amendment of 1919, to the effect that a Shah jog hundi is not a negotiable instrument, can not help us in deciding the point in issue before us.

The result is that on one side we have the opinion expressed in *Kannayalal Bhoya* v. *Balaram Paramasukdoss* (3) to the effect that a Shah jog hundi was a negotiable instrument within the definition of section 13, clause (2) of the Negotiable Instruments Act. On the other hand, in the above mentioned two Calcutta cases it was held that such hundis were not negotiable instruments with reference to the Negotiable Instruments Act. We have pointed out that the two Calcutta cases were decided with reference to the definition of bill of exchange as given in the Negotiable Instruments Act before it was amended in 1919. We have, however, come to the conclusion that a "Shah jog hundi" is not a

(1) (1892) I.L.R., 16 Bom., 689. (2) A.I.R., 1923 Lah., 388.
(3) (1922) 43 M.L.J., 480.

bill of exchange as defined in the Negotiable Instruments Act.

What we have, now, to consider is whether the hundis before us can be said to be negotiable instruments independently of the provisions of the Negotiable Instruments Act. According to the definition of a "negotiable instrument" after the amendment of the Act (Act VIII of 1919), a negotiable instrument means a promissory note, bill of exchange, or cheque payable either to order or to bearer. The hundis before us are not promissory notes or cheques. Nor are they bills of exchange as defined in section 5 of the Negotiable Instruments Act. Now it is important to bear in mind that the Negotiable Instruments Act deals with only three specified classes of negotiable instruments, which are in common use, and it does not purport to deal with all kinds of instruments which have a certain negotiability such as bills of lading, railway receipts, delivery orders. Indian law has always recognized negotiability by custom and there may be instruments which may be impressed with the character of negotiability, and where that question has to be determined it will have to be decided independently of the provisions of the Indian Negotiable Instruments Act. In deciding the question of negotiability it is always important to remember two very essential conditions, both under the Negotiable Instruments Act and mercantile usage. One is that the instrument is transferable like cash by delivery and the other is that the holder *pro tempore* has the title to claim or receive payment in his own name. As already pointed out, the Negotiable Instruments Act deals with only three kinds of instruments, bills of exchange, promissory notes and cheques. It makes no provision as regards hundis, yet it has never been held anywhere that a hundi is not a negotiable instrument. Negotiable instruments, in oriental language, are sometimes promissory notes in form and substance; but generally they are of the type of bills of exchange and are called hundis.

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The Act expressly saves from its operation any local usage relating to such instruments.

In *Mercantile Bank of India* v. *D'Silva* (1), there are observations which go to show that a party may be permitted to show that though a particular instrument does not become negotiable under the provisions of the Negotiable Instruments Act, yet it may be shown that in the mercantile world, for many years, it has been the custom to treat such documents as negotiable instruments and as passing by delivery, and therefore it should be treated as a negotiable instrument.

Section 1 of the Negotiable Instruments Act provides that "nothing herein contained affects . . . . . any local usage relating to any instrument in an oriental language." It should be borne in mind that the Act is not exhaustive of all matters relating to a negotiable instrument, nor does it purport to deal with all kinds of negotiable instruments. Whenever a question arises as to whether or not a document in an oriental language is a negotiable instrument, the point will have to be decided not by looking to the definition of a negotiable instrument as given in the Negotiable Instruments Act, but independently of its provisions. The courts will find out how such an instrument has been treated in the past and if it appears that according to usage or custom such instruments have been treated as negotiable instruments, then they will be treated as such.

One of the earliest cases on the point is *Davlatram Shriram* v. *Bulakidas Khemchand* (2). That was a case decided several years before the Negotiable Instruments Act of 1881 came into force. The nature of a "Shah jog hundi" is elaborately discussed in that case by ARNOULD, J., in a very well considered judgment. We find that in that case a Shah jog hundi was treated as a negotiable instrument.

(1) (1928) I.L.R., 52 Bom., 810. (2) (1869) 8 Bom. H.C.R., 24.

Another case on the point is *Balmukand Lal* v. *Collector of Jaunpur* (1). This is a clear authority against the contentions raised by the appellant. It related to a Shah jog hundi. One Rajah Harihar Dat Dubey had drawn some hundis on himself. These hundis had been accepted by Rajah Harihar Dat, and the plaintiff who was the holder of these hundis sued the Rajah for recovery of the amount due on them. A Bench of two learned Judges of this Court decided that there was nothing in the endorsement which should operate to limit or otherwise affect their negotiability in the hands of the appellant, their endorsee. The learned Judges further remarked as follows: "The hundis were all made payable 'to a respectable person', which was the same in legal effect as payable 'to bearer', and thus their legal and negotiable character was not limited, and obviously was not intended to be limited, by the subsequent writing of the words 'hundi accepted by Rajah Harihar Dat Dubey in favour of Ram Shankar Sukul'."

Another case on the point is *Ganesdas Ramnarayan* v. *Lachmi Narayan* (2). It was a case relating to a "Shah jog hundi". We find the following observations which are to be found at page 577:

"Now the meaning of hundis made payable to Shah and the usage in regard to such documents among native merchants on this side of India was very fully considered in a case which came before SIR JOSEPH ARNOULD in 1869, in which a large body of evidence was given on the subject—*Davlatram Shriram* v. *Bulakidas* (3); and, as section 1 of the Negotiable Instruments Act, 1881 (Act XXVI of 1881) states that nothing in that Act contained affects any local usage relating to any instrument in an oriental language unless such usages are excluded by any words in the body of the instrument which indicate an intention that the legal relations of the parties thereto shall be governed by that Act, and no such words are to be found in the hundi in question, the usage proved as well as the decision in that case afford a guide of which this Court can avail itself in the deter-

(1) Weekly Notes 1884, p. 3. (2) (1891) I.L.R., 18 Bom., 570.
(3) (1869) 6 Bom. H.C.R., 24.

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mination of the points submitted for our consideration by the Chief Judge of the small causes court."

In *Madho Ram* v. *Nandu Mal* (1) SHADI LAL and WILBERFORCE, JJ., held that a Shah jog hundi was a negotiable instrument. It will, however, be seen from the observations made at page 983 that it was conceded in that case that "Shah jog hundis" were negotiable instruments. The learned Judges, in their judgment, at page 983 remarked:

"Because it is admitted by the learned counsel for the respondent that the hundis in question must be regarded as negotiable instruments. . . . The instrument, in respect of which the Additional Judge has given his verdict against the appellant, is what is called a 'Shah jog hundi' which is a bill payable to a Shah or banker. A hundi of this kind is similar, to some extent, to a cheque, crossed generally, which is payable only to, or through, some banker. The object in both cases is that the payment should be made to a respectable person and not to a person who has got hold of the instrument in a surreptitious manner. In the case of a Shah jog hundi it is the duty of the payer to make inquiry before payment that the payee is a respectable person, so that if the hundi turns out to be a stolen or a lost one, or to contain a forged endorsement, the payer may be able to demand a refund from the Shah to whom the money has been paid by mistake."

Another case on the point is *Champaklal Gopaldas* v. *Keshrichand* (2). The nature of a Shah jog hundi was considered by MIRZA, J., in that case at very great length in an elaborate and exhaustive judgment and he came to the conclusion that a Shah jog hundi was a negotiable instrument till it reaches a "Shah", when it ceased to be negotiable. At pages 779 and 780, he made the following observations:

"As a result of these authorities the conclusion I have come to with regard to 'Shah jog' hundis is that a 'Shah jog' hundi in its inception is a hundi which passes from hand to hand by delivery and requires no indorsement. . . . Indeed the body of the hundi requires that the amount be paid to a Shah. It contemplates the hundi passing from hand to hand until it

(1) (1920) 58 Indian Cases, 982. (2) (1925) I.L.R., 50 Bom., 765.

reaches a Shah who, after making due inquiries to secure himself, would present it to the drawee for acceptance or for payment. . . . But although a 'Shah jog' hundi in its inception is one which passes by delivery without any indorsement, yet it may at any time be restricted by being specially indorsed. Where any such restriction appears on the face of the hundi, that restriction applies to it and it ceases to be a bearer hundi which can pass from hand to hand. . . . Further, the negotiability of the 'Shah jog' hundi as a bearer hundi comes to an end when it reaches the hands of the Shah."

Another case on the point is *Murli Dhar Shankar Das* v. *Hukam Chand Jagadhar Mal* (1). There a Bench of two learned Judges of the Punjab High Court held that a "Shah jog hundi" was not equivalent to a hundi payable to bearer and it ought not to be paid by the drawee unless it has endorsed on it, when presented, the name of the Shah by whom it is presented or rather by whom it is sent for presentation, although it is presented by a respectable person. A perusal of this case, however, shows that it is no authority for the proposition that a "Shah jog hundi" is not a negotiable instrument. It may be that a Shah jog hundi is not a bill of exchange and therefore not a negotiable instrument within the Negotiable Instruments Act; but it may, nevertheless, be a negotiable instrument because it is a document in vernacular, which is not dealt with by the Indian Negotiable Instruments Act of 1881.

No case has been cited before us in which it may have been held by any of the High Courts in India that a "Shah jog hundi" was not a negotiable instrument. It is true that in *Assaram* v. *Kesri Chand* (2), and *Keshari Chand* v. *Asharam Mahato* (3), it was held that a "Shah jog hundi" was not a bill of exchange; but these decisions were arrived at with reference to the definition of a "bill of exchange" as it appeared in Act XXVI of 1881 before its amendment in 1919. Even after the amendment "Shah jog hundis" can not come within the

(1) A.I.R., 1932 Lah., 312. (2) (1912) 33 Indian Cases, 247.
(3) (1915) 33 Indian Cases, 250.

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definition of "bill of exchange" as given in section 5 of the Act; but as we have already pointed out, the question which we have to decide is not whether a "Shah jog hundi" is a bill of exchange but whether it is a negotiable instrument independently of the provisions of the Negotiable Instruments Act. As we have already mentioned, the Act does not govern the hundis or documents in vernacular; the hundi may not come within the definition of "bill of exchange" as given in section 5 of the Negotiable Instruments Act and yet it may be a negotiable instrument because negotiability of such documents has been recognized in India.

In *Krishnashet* v. *Hari Valji Bhatye* (1) it was held that the Negotiable Instruments Act (XXVI of 1881), in the absence of local usage to the contrary, applies to hundis. The same view is expressed in *Moti Lal* v. *Moti Lal* (2). As has already been pointed out by us, the Negotiable Instruments Act is not exhaustive of all matters relating to negotiable instruments. It merely regulates the issue and negotiation of bills of exchange, promissory notes and cheques. And as decided in *Krishnashet* v. *Hari Valji Bhatye* (1), and *Moti Lal* v. *Moti Lal* (2), the provisions of the Act will be applied even to hundis and other instruments in oriental language.

After a consideration of the case law on the subject we are of opinion that it must be held that a "Shah jog hundi", which is a document in vernacular, is a negotiable instrument although it does not come within the definition of a "bill of exchange". This view was taken in *Balmakund Lal* v. *Collector of Jaunpur* (3) by a Bench of two learned Judges of this Court and we find that this view has never been challenged. It is also to be borne in mind that in several cases to which we have already referred, the same view was taken and we there-

(1) (1895) I.L.R., 20 Bom., 488. (2) (1883) I.L.R., 6 All., 78.
(3) Weekly Notes 1884, p. 3.

fore find no justification for differing from the view expressed by a Bench of this Court. We must, therefore, hold that the decision of the learned Judge of the lower appellate court is correct and must be affirmed.

Learned counsel for the appellant contended that there was no proper presentation of the hundis in question. This contention can not be accepted, as it appears from the judgment of the first court that the point was not pressed before it.

For the reasons given above, the three appeals stand dismissed with costs.

## REVISIONAL CRIMINAL

*Before Mr. Justice Harries*

MOTI PANSARI *v.* USMAN AND OTHERS*

1936
*January*, 29

*Court Fees Act (VII of 1870), section 19, clause xvii—Exemption from court fee—Petition by prisoner—Application in revision by a prisoner against the acquittal of the opposite party—Not exempt from court fee.*

Section 19, clause xvii, of the Court Fees Act contemplates a petition by a prisoner claiming some relief or indulgence or right on behalf of himself in his capacity as a prisoner. An application filed by a prisoner for revision of an order of acquittal of the opposite party is wholly unconnected with the applicant's condition or status as a prisoner and asks for no relief affecting him in his capacity as a prisoner; it does not fall within section 19, clause xvii and is not exempt from court fee.

Sir *C. Ross Alston* and Mr. *Madan Mohan Lal*, for the applicant.

The application was heard *ex parte*.

HARRIES, J.:—This is an application in revision filed by one Moti Pansari praying that an order of acquittal passed by the Second Additional Sessions Judge of Gorakhpur, dated the 2nd of January, 1935, be set aside

*Criminal Revision No. 64 of 1936.