

**(2014) 2 BC 133 : (2013) 4 CALLT 192 : (2014) 2 WBLR 864**

**Calcutta High Court**

**Case No:** C.S. No. 192 of 1988

Om Prakash  
Jhunjhunwala and  
Others

APPELLANT

Vs

UCO Bank and Another

RESPONDENT

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**Date of Decision:** Aug. 2, 2013

**Citation:** (2014) 2 BC 133 : (2013) 4 CALLT 192 : (2014) 2 WBLR 864

**Hon'ble Judges:** Soumen Sen, J

**Bench:** Single Bench

**Advocate:** Dhruva Ghosh, Mr. Debraj Bhattacharya, Mr. Jeevan Ballav Panda and Mr. Rishav Dutt, for the Appellant; Soumen Das, Rajarshi Dutta and Mr. Sourjya Roy for the UCO Bank, for the Respondent

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### **Judgement**

Soumen Sen, J.

The plaintiffs Nos. 1 to 5 are the trustees of the trust for Texmaco Ltd. Employees' Provident Fund. The instant suit has

been filed by the plaintiff for recovery of a sum of Rs. 7,90,000/- against the defendants, Jointly and severally along with interest. The claim in the

suit arises out of a wrongful encashment of a forged cheque of the plaintiff Company.

2. The plaintiff claims that a Cheque bearing No. 143998 dated 21st September, 1987 is a forged cheque and the bank allowed the wrongful

encashment of the said cheque without ascertaining that the signatures appearing on the said instrument are forged and the rubber stamp that

appeared on the cheque was a forged rubber stamp of the plaintiff Company. The defendant failed to scrutinize the cheque of such high

denomination before its encashment and failed in its duty in scrutinizing and verifying the signatures and the rubber stamp appearing on the cheque

with that of the Specimen Signature Card and the specimen rubber stamp of the company that was kept with the Bank. The Bank acted negligently

and acted in collusion and conspiracy with some person and/or persons unknown to the plaintiffs in facilitating encashment of such forged cheque.

3. The plaintiff in short in the suit claimed recovery of the loss of money wrongfully debited from their bank account. The plaintiff averred that any

two of the plaintiffs, namely, plaintiffs Nos. 1, 2 and 3 were duly authorized to sign the cheques to operate the said current account. Prior to 7th

August, 1987, the defendant No. 1 duly issued a cheque book containing 100 cheques bearing Nos. 143901 to 144000 in favour of the plaintiffs

for their use in relation to the said current account. On 13th October, 1987, the statement of account was received from the defendant No. 1 in

relation to the said current account and on verification thereof, it transpired that a cheque bearing No. 143998 for a sum of Rs. 7,50,000/- had

been encashed on 21st September, 1987, against the endorsement "Self from the said current account though no cheque bearing the said No.

143998 had been issued on 21st September, 1987 by the plaintiffs or any of them for being encashed. On 14th October, 1987, the plaintiffs Nos.

1 and 2 took inspection of the said cheque bearing No. 143998 and on scrutiny following discrepancies were noticed:-

(a) Neither of the signatures appearing on the original cheque was the signature of any of the plaintiffs Nos. 1 and 2. On the said cheque, purported

to have been signed by the plaintiffs Nos. 1 and 2 each of the signatures appearing was forged.

(b) The rubber stamp appearing on the face of the said cheque at the top to the effect A/C. Payee and all other crossing cancelled and pay cash

Texmaco Ltd. Employees Provident

was not the rubber stamp of the plaintiffs. The said rubber stamp was also forged. Each of the signatures appearing above the words "Trustee" was

forged. The signatures were not of the plaintiffs Nos. 1 and 2.

(c) the hand-writing appearing on the body of the said cheque was not the hand-writing of any of the employees of the plaintiffs or of any body

authorized by the plaintiffs to write on the body of the cheque.

(d) On the reverse side of the said cheque, the rubber stamp appearing at the top was not the rubber stamp of the plaintiffs and the rubber stamp

was forged The said rubber stamp did not read Texmaco Ltd. Employees" Provident Fund" but read Texmaco Employee"s Provident Fund". The

forged rubber stamp had letters of larger size than the letters of genuine rubber stamp. On the reverse side of the said cheque, neither of the

signatures appearing at the top was the signature of the plaintiffs Nos. 1 and 2 and each of this signature was also forged

(e) The initials appearing on the reverse of the said cheque were not the initials of any of the employees of the plaintiffs. The Initials were also

illegible.

4. The defendant No. 1 UCO Bank has filed a written statement. The defendant No. 1 contended that the said cheque was prepared or caused to

be prepared in usual course of business by the plaintiffs and/or its duly authorized servants or agents. The payment of Rs. 7,50,000/- was made in

due course by the defendant No. 1. The dealings and transactions of the employees of the defendant No. 1 in passing the concerned cheque were

all fair, done honestly and aboveboard. The allegation of collusion or conspiracy or connivance are completely baseless. The defendant denied that

the said instrument was forged and that the signature or initial on the said cheque or on the reverse thereof or the rubber stamp or any other writing

thereon was forged or fabricated. The defendant reiterated that due and proper care was taken before allowing encashment of the cheque and the

persons who had come to collect the proceeds of the said cheque were the persons who used to visit the defendant No. 1 for collection of money

on behalf of the constituent. The collection was made by the authorized persons on behalf of the plaintiffs and the money was also taken in the

security van/cash van by the plaintiffs representatives. The defendant is obliged to honour all cheques drawn by the account holders upon

verification of the signatures appearing thereon. The particular cheque was indeed drawn by the plaintiffs and the signatures appearing thereon

matched and/or tallied with those appearing on the specimen signature cards of the particular account. The defendant fulfilled its contractual

obligation by making payment against the said cheque, the signatures appearing thereon having matched and/or tallied with those appearing on the

specimen signature cards of the particular account. It is stated in this context that in the matter of passing of cheques for encashment the signatures

alone are verified and the plaintiffs being aware of such practice have deliberately sought to raise a cloud of doubt by using a different rubber

stamp. The plaintiffs have themselves appropriated the sum encashed and have not suffered any loss and damage.

5. The defendant No. 2 was a Deputy Superintendent of the plaintiff No. 6 and he had the custody of the said cheque book which contains the

forged cheque. The defendant No. 2 filed a written statement denying all the allegations. The said defendant No. 2 has categorically stated that the

said defendant never had the custody of the cheque book and he was in no way connected with the issuance of the Cheque No. 143998 for a sum

of Rs. 7,50,000/-. He was in no way connected with issuance, presentation and encashment of the said cheque and the handling of the cash in

question. On 13th October, 1987, the defendant while scrutinizing the bank account statement as a routine work detected that a sum of Rs.

7,50,000/- was withdrawn from the account of defendant No. 1 by a cheque bearing No. 143998. The defendant further detected that out of 100

cheques, the cheque bearing No. 143998 which was at the end and the cheque book was used while the preceding cheques of a good number

were used. The defendant immediately brought it to the notice of the plaintiff No. 1 and the plaintiffs without proper verification of such alleged

transactions and the defendant No. 1 lodged a complaint with the local Police Station against the defendant u/s 409 of the Indian Penal Code as a

result of which the defendant was arrested. The house of the defendant was searched by the Police and cash and passbooks were seized and on

the basis of the complaint, a criminal case was started. The said defendant categorically stated that he was never entrusted with the custody of the

cheque book and on the contrary it was stated that under Rule 3(2) of the Provident Fund Rules, the plaintiff No. 6 the Board of Trustees would

be solely responsible for the fund and management of the Employees' Provident Fund.

6. The defendant No. 2 was the Deputy Superintendent of the plaintiff No. 6 and the said cheque book was in his custody. The plaintiff stated that

the said cheque bearing No. 143998 had been stolen and secretly, surreptitiously removed from the said cheque book without the knowledge,

authority and consent of the plaintiffs by some person or persons unknown in collusion, conspiracy and connivance with the defendant No. 2. On

such facts, the plaintiff instituted the aforesaid suit for recovery of money against the defendants jointly and severally.

7. Mr. Dhruva Ghosh, learned Counsel appearing on behalf of the plaintiff, submits that the opening of the account and the relationship of the

plaintiffs and the defendants are in dispute. The plaintiffs Nos. 1, 2 and 3 were the trustees of the plaintiff No. 6. They used to operate the

aforesaid current account of the Trust at UCO Bank. The Trust/constituent for the purpose of operation of their current account duly submitted

their specimen signatures and the specimen rubber stamp with the Bank. Any two of the three persons who could and/or were authorized to

operate the bank account by putting their signatures were O.P. Jhunjhunwala, the plaintiff No. 1, A.K. Nanda, the plaintiff No. 2 and K.C.

Oberoi, the plaintiff No. 3. The rubber stamp of the constituent was Texmaco Ltd. Employees' Provident Fund". It is submitted that the cheque of

the constituent could only be honoured by the Bank if it is duly signed by its constituent with their rubber stamp. On 13th October, 1987 after the

Company received a Statement of Account from the Bank and it transpired that a sum of Rs. 7,50,000/- had been withdrawn upon encashment of

a Cheque No. 143998 against the endorsement "Self" from the account and which had not been accounted for. The plaintiffs thereafter obtained

inspection of the said cheque wherefrom the aforesaid discrepancies were noticed and the claim of the plaintiff that the cheque is forged and

fabricated is established. The plaintiffs found that S.K. Mondal, the defendant No. 2 in whose custody the cheque book was kept in collusion and

conspiracy with defendant bank fraudulently encashed the cheque and misappropriated the money. The plaintiffs, soon after the discovery of the

forgery, on that very day, i.e., on 13th October, 1987 lodged an FIR at the Belghoria Police Station against the defendant No. 7 for a sum of Rs.

7.5 lakhs. A criminal case was initiated by P.S. Case No. 5 of 1987 against S.K. Mondal. Police searched the house of Mr. Mondal and seized,

inter alia Rs. 27,793/- in cash and Rs. 56,100/- deposited in savings bank account. Police also searched the office of the Company and seized,

inter alia, the Cheque Book of the current account of the Company, Statement of Account and the Rubber Stamps of the constituent. Police also

searched the office of the Bank and seized inter alia, the disputed Cheque, Specimen Signature Card and the Ledger Card of that current account

and the same was, thereafter, submitted before this Court. On 30th November, 1987 Police also arrested Babban Ram, Cashier of the UCO

Bank and on 5th December, 1987 police also arrested Roshan Lal Gurung, Security Inspector of the Company. However, on 12th December,

1987 both Babban Ram and Roshan Gurung were released on bail by the SDJM, Barrackpore. On 13th January, 1988, S.K. Mondal was

released on bail. On that very day the Company suspended Mr. Mondal from his service. Subsequently on 22nd March, 1993, Mr. Mondal

discharged from the criminal case by the SDJM, Barrackpore since the police failed to submit the charge sheet within a period of six months from

the date of his arrest as required u/s 167(5) of Cr.PC. It appears that the bank acted negligently and without verifying the signatures and rubber

stamps of the plaintiffs debited the amount from the plaintiffs account.

8. Mr. Ghosh has taken me through the deposition of the witnesses in order to establish that the bank acted negligently and defendant No. 2 had

conspired and colluded with the bank in causing such defalcation of fund.

9. Mr. Ghosh submitted that with ordinary care the bank could have ascertained that the said cheque is forged which is apparent and would

appear on the face of the cheque. The various discrepancies he referred to are summarized hereinbelow:-

(a) On the face of the cheque there are:

(i) at the top left hand side of the cheque there is a rubber stamp that reads ""A/c Payee only"";

(ii) at the top middle of the cheque there is a rubber stamp that reads:

A/c Payee & all others

crossing cancelled & Pay Cash"":

(iii) just below the aforesaid rubber stamp there is another rubber stamp and that reads:

Texmaco Employee"s Provident Fund

(iv) there are two signatures above the word ""Trustee"" purportedly of A.K. Nanda and O.P. Jhunjhunwala, the plaintiff Nos. 2 and 1 respectively:

(v) at the bottom right hand side of the said cheque there is a rubber stamp that reads:

Texmaco Ltd. Employees" Provident Fund

(vi) there are two signatures above the word ""Trustee"" purportedly of A.K. Nanda and O.P. Jhunjhunwala, the plaintiff Nos. 2 and 1 respectively:

(vii) on the middle of the cheque there is a stamp of the UCO Bank of rectangular impression with the date 21.09.1987 along with the initial of the

Bank officials:

(viii) there is another stamp on the middle of the cheque just below the above stamp of the UCO Bank of also rectangular impression and which

reads ""PAY CASH"" and ""PASS"" and illegible words with the initials of the Bank officials:

(ix) at the bottom right hand side there is another stamp of the Bank with circular impression and on the middle of which there is an initial of the

Bank official;

(x) As written the cheque is a ""Self cheque of Rupees 7.50,000/- (""Seven lacs fifty thousand only"")

(b) On the reverse side of the cheque there are:

(i) a rubber stamp that reads:

Texmaco Employees" Provident Fund

(ii) There are two signatures above the work Trustee"" purportedly of A.K. Nanda and O.P. Jhunjhunwala, the plaintiff Nos. 2 and 1 respectively:

(iii) Just below the above rubber stamp there is another rubber stamp of the Bank and the date written over there as ""21/09/87"" and just below the

aforesaid date there are two initials of the Bank officials:

(iv) There are two initials of the Bank officials at the right and left side of the above stamp:

(v) At the top right hand side there are two illegible signatures purportedly of the persons who encashed the cheque.

10. It was submitted that the Specimen Signature Card that was produced by the Policy would show that signatures with the rubber stamp are the

mandate on which the bank should act. It was also submitted that Exhibit "G" which is a photocopy of the relevant Specimen Signature Card of

O.P. Jhunjhunwala, the plaintiff No. 1, A.K. Nanda, the plaintiff No. 2 and K.C. Oberoi, the plaintiff No. 3 along with the rubber stamp of the

plaintiff No. 6 which reads as follows:-

Texmaco Ltd. Employees" Provident Fund

Trustee

11. By the current account rules, the defendant Bank was obliged to operate the account and/or honour the cheque issued on behalf of the account

holder only on the signatures of any two of the aforesaid plaintiffs with the aforesaid rubber stamp.

12. If the signatures and the rubber stamp of the disputed cheque and the Specimen Signature Card are compared the following facts are found:-

(i) On the face of the cheque at the top middle just below the rubber stamp of

Ale Payee & all others

Crossing cancelled & Pay Cash

The rubber stamp reads

Texmaco Employee"s Provident Fund

(ii) The specimen rubber stamp of the plaintiff is, however,

Texmaco Ltd. Employees" Provident Fund

(iii) It would, thus, appear that in the rubber stamp appearing on the cheque the word ""Ltd."" is missing. Also in the rubber stamp in the cheque the

apostrophe is appearing in the word ""Employee"s"" is before the last letter "s" but in the specimen rubber stamp the apostrophe appearing in the

word ""Employees"" at the end of the word after the letter "s".

(iv) The rubber stamp appearing on the reverse side of the cheque also has the same and/or Identical difference with the specimen rubber stamp as

aforesaid.

(v) The two signatures of A.K. Nando, the plaintiff No. 2, appearing above the work ""Trustee"" at the middle and at the bottom of the face of the

cheque do not match with the specimen signature of A.K. Nando. The signature of A.K. Nanda above the work ""Trustee"" on the reverse side of

the cheque also does not match with the specimen signature of A.K. Nanda. (vi) The two signatures of O.P. Jhunjhunwala, the plaintiff No. 1,

appearing above the word Trustee"" at the middle and at the bottom of the face of the cheque do not match with the specimen signature of O.P.

Jhunjunwala. The signature of O.P. Jhunjunwala above the work ""Trustee"" on the reverse side of the cheque also does not match with the specimen signature of O.P. Jhunjunwala.

13. Mr. Ghosh has referred to the evidence of Mr. O.P. Jhunjunwala who identified the forged cheque and explained the forgery of the said

cheque as also the forgery of the rubber stamp appearing on the front side as well as on the reverse side of the cheque. The said witness identified

the forged signature and explained the discrepancies appearing in the cheque and the rubber stamp appearing on the front and the reverse side of

the cheque. He also found that the handwriting appearing on the cheque was not the handwriting of any of the employees of the plaintiffs or any of

the trustees of the plaintiff. The said witness has categorically stated that he did not sign the cheque and the signatures appearing on the cheque are

not of any of the trustees appearing on the cheque.

14. It was submitted that the truthfulness and veracity of such evidence remained firm and unshaken in cross-examination. Sri A.K. Nanda also

corroborated the evidence of O.P. Jhunjunwala. He also stated that the signature appearing on the front and reverse side of the said cheque are

not his signatures and he had nothing to do with the said cheque.

15. The plaintiff states that the disputed cheque was in custody of the defendant No. 2, S.K. Mondal and he in collusion and conspiracy with the

defendant Bank put the forged and the fabricated signatures and the rubber stamps of the plaintiffs in the cheque and wrongfully, illegally and

fraudulently presented for its encashment. The defendant Bank and its officials in collusion, conspiracy and connivance with the defendant No. 2,

wrongfully, illegally and negligently, without verifying the specimen signatures and the rubber stamp of the Company debited the cheque from the

current account of the Company, and paid the amount to some persons and/or persons unknown to the plaintiffs and not authorized to receive

payment.

16. The defendant Bank being the custodian of the plaintiffs' account, was obliged to check, verify and scrutinize the signatures and the rubber

stamp appearing on the cheque with that of the Specimen Signature Card (Exhibit G) kept with the Bank before the encashment of the cheque.

The Bank is also duty bound under the Banking Rules and practice to honour a cheque provided the rubber stamp and the signature on it is in

conformity with that of the Specimen Rubber Stamp and the Specimen Signature kept with the Bank. However, it appears on comparison of the

cheque and the Specimen Signature Card that the Bank miserably failed to detect the discrepancy of the rubber stamp and the signatures of the

plaintiffs appeared in the cheque and negligently and wrongfully allowed it to be encashed. Both the witnesses of the plaintiffs stated during their

examination and also in cross-examination that the Specimen Signature and the Specimen Rubber Stamp in the Specimen Signature Card was kept

with the Bank and the Bank was obliged to examine and verify the rubber stamp and the signatures in the cheque before being it encashed. At the

same time, the plaintiffs' witnesses during their examination as well as during their cross-examination pointed out the forgery of the rubber stamp

and the signatures that appeared on the cheque and explained the negligence of the Bank as the forged cheque was wrongfully allowed to be

debited from the current account of the plaintiff without verification of the signatures and the rubber stamp of the plaintiffs.

17. It is also a fact that although the cheque was drawn as Self with the purported signatures of O.P. Jhunjhunwala and A.K. Nanda the plaintiff

Nos. 1 and 2 respectively, the Bank encashed the cheque without the signatures and/or the initials of the aforesaid plaintiffs on the reverse side of

the cheque. The Bank is also obliged to ask the payee and for this cheque O.P. Jhunjhunwala and A.K. Nanda since the cheque was drawn as

"Self", to put their signatures and/or initials on the reverse side of the cheque in front of the Officers of the Bank before making any payment

against the cheque or at least obtain the signature of the person presenting the bearer cheque before payment. Sometimes banks permit withdrawal

of the amount of a bearer cheque without insisting the signature of the bearer of the cheque. The bank does so in its own peril. In this age of fraud,

bank must protect its own interest and also the interest of its customers which can only be ensured if the bank is vigilant and careful of its duties and

obligations. The signature of the bearer on the reverse of the cheque in case of a bearer cheque is one of the checks and balances and measures to

be adopted by the bank to avoid fraud. The signature of the bearer along with proper identification would enable the bank to protect its own

interest and safeguard the interest of the customer. The correct and proper identification of signatures is the responsibility of the banker. The bank

is supposed to detect forgery and ""refuse payment. If the bank is unable to do so, it is responsible for the consequent loss. The production of

forged signatures has acquired the status of an art and science and the master forgers have perfected the techniques so well that it can easily

mislead the layman and can hoodwink most of the bankers who have to deal with signatures and who are not handwriting experts. In this world of

banking transactions involving voluminous documents, the bank sometimes acts in a hurry. The bank is required to exercise due safeguard in order

to protect that forgery of signatures which are committed in a number of ways, namely, similitude signatures which is also known as imitation

forgery, stress signatures, transplanted signatures, forgery of contents, other genuine signatures obtained by tricking or otherwise.

18. However, it did not verify and/or scrutinize the signatures and/or the initials of the payee before making any payment against the cheque. The

Bank was, thus, further negligent in making payment against the cheque to some unknown person and/or persons without verification of the

signatures and/or initials of the plaintiffs on the reverse side of the cheque before making payment against the "Self" drawn cheque in violation of

the Current Account Rules and/or of the Banking Rules and/or practice.

19. The contention of the plaintiffs with regard to the forgery of the cheque has been further corroborated by the reports of the handwriting

experts. Purushattam Chatterjee, the document examiner who examined the cheque and the Specimen Signature Card submitted a report (Exhibit

J) wherein he explained the forgery of the cheque. He explained in details the forgery of the signatures of O.P. Jhunjhunwala and A.K. Nanda as

well as the forgery of the rubber stamp that appeared on the cheque. During his examination before this Hon"ble Court Mr. Chatterjee stated that

he examined the original cheque and the original Specimen Signature Card and submitted the report explaining the forgery of the cheque. He also

finds and explains the forgery of the cheque and states that there is not even the "pictorial similarities" between the signatures that appear on the

cheque and in the Specimen Signature Card. Mr. Chatterjee even during his cross-examination explained the forgery of the signature and of the

rubber stamp appearing on the cheque. He also stated that there was not even the "pictorial similarities" of the signatures between the Specimen

Signature Card and the signatures appearing on the cheque. He further stated on cross-examination that the forgery of the cheque were so

palpable to naked eye that the Bank must be held to be negligent in encashing the cheque.

20. Harish Chandra Ganguly, the Handwriting-expert, was appointed by this Hon"ble Court to examine and for submitting a report on the

signatures appearing on the disputed cheque. Mr. Ganguly examined the cheque in the office of the Registrar, Original Side, High Court, Calcutta

and on comparing the purported signatures of O.P. Jhunjhunwala and A.K. Nanda that appeared on the cheque with that of their standard

signatures submitted a detailed report explaining about the signatures appearing on the cheque. He, however, concluded that the signatures

appearing on the cheque were forged and were free hand imitation of the signatures of the genuine signatories. Mr. Ganguly on examination

identified and explained the report that he had submitted before this Hon"ble Court and the report and the annexures thereto are appearing as

Exhibit-L and Exhibit-M in this instant proceedings.

21. Mr. Ghosh also referred to the deposition of Dhruba Das, UCO Bank who has scrutinized and verified all such cheques and submitted that the

evidence of the said witness would show that the bank acted negligently in allowing the cheque encashed. The said witness, according to Mr.

Ghosh, had admitted the forgery cheque despite the acknowledging the verification done by the bank officials. He has also referred to Question

Nos. 59 and 61 of the said witness to show that the said witness also stated during such cross-examination that the bank is obliged to encash a

cheque if it is in conformity with that of the Specimen Signature. In this connection Mr. Ghosh has relied upon the following decisions:-

(I Bihta Co-operative Development Cane Marketing Union Ltd., and Another Vs. The Bank of Bihar and Others,

(II) 44 CC 6 (Canara Bank v. Canara Sales Corporation & Ors.)

(III) Canara Bank Vs. Canara Sales Corporation and Others,

(IV Syndicate Bank Vs. Jaishree Industries and Others,

22. In Bihta Co-operative (supra), the learned Solicitor General in respect of the Judgment of the High Court, submitted in substance that even

though there was negligence on the part of the bank and its employees, the plaintiff society was not altogether free from blame or negligence in that

but for the part played by at least one of its employees in the matter of encashment of the cheque for Rs. 11,000/- the fraud could not have been

perpetrated. The learned Solicitor General relied upon House of Lords in London Joint Stock Bank Ltd. v. Macmillan & Arthur. 1918 AC 777

and the observations of Lord Finlay L.C. which are reproduced hereinbelow:-

As the customer and the banker are under a contractual relation in this matter, it appears obvious that in drawing a cheque the customer is bound

to take usual and reasonable precautions to prevent forgery. Crime, is indeed, a very serious matter, but every one knows that crime is not

uncommon. If the cheque is drawn in such a way as to facilitate or almost invite an increase in the amount by forgery if the cheque should get into

the hands of a dishonest person, forgery is not a remote but a very natural consequence of negligence of this description.

23. The Hon<sup>ble</sup> Supreme Court after considering the said passage held that the said principle would not support the case of the respondent and

held as follows:-

11. If the signatures on the cheque had been genuine so that there was a mandate by the customer to the banker but the cheque was somehow got

hold of by an unauthorized person and encashed by him, the bank might have had a good defence. If the signatures on the cheque or at least that of

one of the joint signatories to the cheque are not or is not genuine, there is no mandate on the bank to pay and the question of any negligence on

the part of the customer, such as, leaving the cheque book carelessly so that a third party could easily get hold of it would afford no defence to the

bank. According to Halsbury's Laws of England (3rd Edition), Vol. 2 Art. 380:

A document in cheque form to which the customer's name as drawer is forged or placed thereon without authority is not a cheque, but a mere

nullity. Unless the banker can establish adoption or estoppel, he can not debit the customer with any payment made on such document in this case,

the finding is that one of the signatures was forged so that there never was any mandate by the customer at all to the banker and the question of

negligence of the customer in between the signature and the presentation of the cheque never arose. Not only was there negligence on the part of

the banker in not ascertaining whether the signatures on the cheque were genuine, the circumstances attending the encashment of the cheque show

conclusively that the banker was negligent and some of its officers fraudulent right from the beginning. The cheque form did not come out of the

customer's cheque book.

24. In *Syndicate Bank (supra)*, the bank failed to take into consideration the anomalous description of the account holder and did not even verify

when a draft of a huge amount, payable to ""Limited"" concern was presented for correction. The bank ignored the peculiar nature and personality of

the account holder which ordinarily should have evoked a suspicion in the mind of the bank. The plea that the bank acted in a good faith was

rejected. The learned Single Judge held that lack of good faith is not the same as being negligent; the two are different concepts altogether. An

utterly negligent person, acting negligently can be said to be acting in good faith; still, he would be answerable to the consequences of his

negligence.

25. From a reading of various textbooks by authorities on the subject namely *The Law and Practice of Banking* by J. Milnes Holden, Elinger's

*Modern Banking Law* and Paget's *Law of Banking* can be summarized as follows:

A document in cheque form on which the customer's name as drawer is forged or placed without authority is not a cheque but a nullity; and, unless

the banker can establish adoption or estoppel, he may not debit the customer with any payment made on it.

26. The common aphorism that a banker is under a duty to know his customer's signatures is in fact incorrect, even as between the banker and his

customer; the principle is simply that a banker may not debit his customer's account on the basis of a forged signature, since in that event no

mandate from the customer for doing so.

27. A specific mode of conduct by the customer which defeats his action against the bank is carelessness related to the drawing of the cheque. A

more complex principle applies where the customer does not sign the cheque in blank but draws it in a manner that enables a rogue to perpetrate a

fraud. Basically, the customer is liable if his conduct involved negligence. This principle can be traced back to *Young v. Grote* reported in 1827 (4)

*Bing.* 253, in which the amount of a cheque was written out in a manner which enabled the payee to raise it. The bank was held entitled to debit

the customer's account with the altered amount. The principle of this case remained confined to the careless drawing of cheques. Lord Finlay LC

in *Scholfield v. Earl of Londesborough* reported in 1896 AC 514 said:

A cheque drawn by a customer is in point of law a mandate to the banker to pay the amount according to the tenor of the cheque. It is beyond

dispute that the customer is bound to exercise reasonable care in drawing the cheque to prevent the banker being misled. If he draws a cheque in a

manner which facilitates fraud, he is guilty of a breach of duty as between himself and the banker and he will be responsible to the banker for any

loss sustained by the banker as a natural and direct consequence of this breach of duty.

28. Negligence which is connected with the actual drawing of a cheque does not usually afford a defence to a bank that has wrongfully honoured a

cheque. In *Bank of Ireland v. Evans* Trustees reported in (1855) 5 HLC 389, which related to the negligent keeping of a seal, Parke B expressed

to the House of Lords the unanimous opinion of the judges: "If there was negligence in the keeping of the seal it was very remotely connected with

the act of transfer." The same view is explained in *Welch v. Bank of England*, 1955 Ch. 508:-

If such negligence could disentitle the plaintiffs, to what extent is it to go? If a man should lose his cheque book, or neglect to lock the desk in

which it is kept, and a servant or stranger should take it up, it is impossible in our opinion to contend that a banker paying his forged cheque would

be entitled to charge his customer with that payment.

29. It would appear that, while a customer must be careful not to facilitate fraud when drawing cheques, he is not under a duty to his banker to

exercise care in organizing his business so as to prevent opportunities for others to forge his cheques.

30. Can a payee bank, on occasions, escape liability by invoking the customer's vicarious liability for the acts of the fraudster? This issue has been

considered, recently, by the House of Lords in *Credit Lyonnais Bank Nederland NV v. Export Credit Guarantee department* (2000) 1 AC 486.

In this case one C, acting in collusion with an employee of the ECGD, one P, perpetrated a fraudulent scheme under which the ECGD issued

guarantees which induced the L Bank to finance transactions which turned out to be shams. The scam used by the rogues involved the application

for ECGD guarantees by C and their ready approval by his accomplice P. When the truth came to light, C absconded. The ECGD refused to make

payment under the guarantees whereupon the L Bank sued. Longmore J dismissed the L Bank's action, holding inter alia that, under a clause

common to the guarantees, the count in contract failed as the L Bank had been reckless in granting C the finance he applied for. The Court of

Appeal and the House of Lords concurred, holding also that ECGD was not vicariously liable for P's deceit. On this issue. Lord Woolf MR's

decision breaks new ground.

31. The action in the instant case was based on the fact that deceit on the ECGD was perpetrated jointly by P, who was its employee, and by C,

who had no nexus with it. The issue was whether, in these circumstances, the ECGD was vicariously liable. His Lordship's answer was that: "[f]or

vicarious liability what is critical, as long as one of the joint tortfeasors is an employee, is that the combined conduct of both tortfeasors is sufficient

to constitute a tort in the course of the employee's employment.

32. On the basis, Lord Woolf concluded that the ECGD would be liable only if the tortious act of both C and P occurred, conceptually, in the

course of P's employment. "You cannot therefore combine the actions of [P] in the course of his employment with actions of [C], which if done by

[P] would be outside the course of [P's] employment". Lord Woolf then considered the L Bank's second argument, which was that the assistance

rendered by P to C was, in itself, a primary "wrong" and hence imposed vicarious liability on the ECGD. An examination of the authorities led him

to the conclusion that there was no separate tort of "procuring" or assisting a third person to commit a tort. Accordingly. P was not liable on a

primary count in tort which would invoke the ECGD's vicarious liability.

33. Where the fraud is perpetrated by an employee in the course of his employment Lloyd v. Grace Smit & Co. 1912 AC 716 supports the

argument that vicarious liability applies. An employer may, thus, be liable where a clerk raises the amount of a cheque entrusted to him for

completion.

34. In Babulal Agarwalla Vs. State Bank of Bikaner and Jaipur, it was held that the bank was liable to pay the customer the amount withdrawn

under the forged cheque. The learned Single Judge on evidence was convinced that the signatures on the cheque were forged and it was held that

the Bank Officer may be duped by the machinations of the forger but when it is established that the signatures on the cheque were forged it could

be said that the bank has made payment on the forged cheque and for the said forged cheque there was no mandate of the plaintiff to the bank to

make payment.

35. In Babulal (supra) the plaintiff found that one cheque was missing from the cheque book of the plaintiff kept in his custody. He approached the

bank on the same date and was informed that Rs. 5,000/- was drawn from the bank from his current account on the strength of that cheque. The

plaintiff had made out the clear case that the said cheque was neither signed by him nor did he encash the cheque, that the signature on that cheque

was forged and the bank and/or its officers without properly verifying the signature on that cheque passed that cheque and that the plaintiff having

suffered loss and damage the bank is not entitled to debit the same from his account and must pay the said amount of cheque together with interest

at the rate of 6% per annum from the date of encashment of that forged cheque till the date of filing of the suit.

36. In such facts on an issue where the bank was entitled to debit the amount of the cheque even if it is found that the customer did not take proper

care to keep cheque in proper custody. The learned Single Judge after taking into consideration section 85(2) of the Negotiable Instruments Act

and the decision of the Hon"ble Supreme Court reported in Canara Bank Vs. Canara Sales Corporation and Others, held as follows:-

On carefully considering the above decision of Supreme Court I am of the view that the decision of the Supreme Court clearly holds that the

mandate of the customer to the Bank to pay the cheque signed by him for bearer which is statutorily recognized by section 85(2) of the Negotiable

Instruments Act ceases as soon as it is proved that cheque paid by the bank was a forged one because a forged cheque is no cheque issued by the

customer. Therefore, the mandate of the customer is not there to the bank to pay such forged cheque. So the protection given to the bank by S. 85

is not available to the bank in respect of forged cheque.

I would now consider as to whether the plaintiff has succeeded in proving that the cheque Ext. 2 contains the forged signature or not. In cross-

examination plaintiff's attention was drawn to the cheque, Ext. 2, and he has clearly stated that the signatures are not his. It is also proved that on

14-8-78 the plaintiff took the plea before the bank that the cheque was forged. The letter at 16-8-78 clearly shows that the plaintiff complained to

the bank that it had made payment on the forged cheque several letters were sent to the bank alleging the same thing and calling upon the bank to

credit the amount of the said cheque to the account of the plaintiff's. But the bank did not respond to any of the letters. The witness examined for

the defendant has not been able to state categorically that the cheque Ext. 2 contained the genuine signatures of the plaintiff. The witness being the

passing Officer of the bank at the relevant time has only stated that as he found the signatures in the cheque Ext. 2 to tally with the specimen

signature he passed the cheque Ext. 2 for payment. But that evidence is not the specific denial of the plaintiffs evidence that those signatures in the

cheque Ext. 2 were not his signatures. The forger can imitate the signature of the drawer and in such case there may be seeming appearance of the

signatures of the cheque with the specimen signature. The Bank Officer may be duped by the machinations of the forger. But when it is established

that the signatures in cheque Ext. 2 are forged it must be held that the bank has made payment on the forged cheque and for the said forged

cheque there was no mandate of the plaintiff to the bank to make payment on such forged cheque. In view of the decision of the Supreme Court

the bank is not liable to debit the said amount of the cheque even if it be found that the plaintiff did not take proper care to keep the cheque of the

relevant cheque book in proper custody. The Supreme Court in the above decision has clearly held that the bank can only avoid the liability if it

can prove that there was ratification or estoppel. In this particular case there is nothing to show that the plaintiff ratified the payment of the cheque.

The plaintiff immediately after coming to know of the payment of the cheque complained to the bank that the cheque was forged and called upon

the bank to credit the said amount to his account. So the plaintiff cannot be bound by the principle of estoppel.

In view of the above circumstances I answer issue Nos. 1 and 5 in favour of the plaintiff.

Now to the issue Nos. 2 and 3. The plaintiff has proved that the signatures in cheque Ext. 2 were forged. In such case even if the necessary

formalities were complied with by the bank, the bank would be liable in view of clear decision of the Supreme Court referred to above. So the

plaintiff need not prove whether the defendant bank was guilty of negligence or not. The bank cannot avoid the liability only by proving that it made

payment in due course according to the apparent tenor of the cheque or by verifying the signatures of the cheque with the specimen signature and

finding no apparent discrepancy.

37. In Mahabir Prasad Bubna Vs. United Bank of India, , while construing sections 6, 58, 85 of Negotiable Instruments Act (26 of 1881) it was

held that the law of contract can either afford or not afford a complete defence to a bank when a case of wrong payment is made out. If the bank

has paid in accordance with the contractual mandate then the bank cannot be liable on contract. If, however, the bank has not paid in accordance

with the contractual mandate, then the bank is liable on contract; notwithstanding the issues of negligence or carelessness. If owing to the neglect or

precautions not taken by a customer of a banker, the dishonest person is permitted to tamper with a cheque then the customer must bear the loss

as between himself and the banker. However, if a cheque book is carelessly left by a customer and the third party utilized it for obtaining payment

from the bank the bank could not put this in a defence to an action for a liquidated claim whereby the bank was called upon to return the money

paid out upon cheques which did not contain the true mandate of the customer. Thus, a banker is bound to honour the cheque duly signed by its

customer. Similarly, the bank is bound, according to the strict terms of the law of contract, not to honour any cheque which is not signed by its

customer. It would be no defence for the Bank to say that a cheque leaf was negligently allowed to be used by the customer and as such the

money was paid out. If the cheque leaf has not been signed by the customer with the intention of charging the Bank to pay or, sending a mandate

to the Bank to pay, then the Bank has no authority to pay.

38. The learned Single Judge while dealing with the right of the bank to sue for damages in the event it is established that such wrong payment was

made due to negligence of customer held that the banker would be permitted in an appropriately framed action in torts to claim for loss and

damage suffered by it by reason of negligence of its customer. It was held that an action in torts by the bank would be, however, raise substantially

different issues. On the basis of the principles of apportionment of liability and the principles relating to contributory negligence, it might well be that

the bank's claim for loss suffered due to carelessness of a customer would, upon a full scale hearing and analysis result in damages coming to 50%

or 60% of the total money paid out by the bank. Such apportionment of liability could not be easily or appropriately made upon the cut and dried

principles which generally determine liabilities according to the law of contract. It is possible theoretically to achieve the same result by assessment

of damages by taking into account the negligence of the customer as a breach of the customer's contract. But that would not change the picture

substantially, because one would be applying rather the principle of apportionment of liability on contributory negligence rather than any classical

principle of assessment of damages on a breach of contract.

39. The bank would contend that they have taken usual precautions before allowing encashment. However, the discrepancies are so apparent and

having regard to the fact that the bank's witnesses have accepted negligence on the part of the bank, it is too late in the day for the bank to

contend that they have acted with due care and caution.

40. Any alterations to a cheque should be authenticated by the initials, or preferably by the signature, of the drawer; if there are two or more

signatories to the cheque, all must join in the confirmation. Sometimes, a dishonest person alters a cheque: usually he raises the amount and forges

the initials or signature of the drawer. If there is any doubt concerning the authenticity of a cheque which has been altered, a prudent banker will

decline to pay the cheque until he has obtained independent confirmation from his customer. The answer written upon the cheque should be

phrased so that it casts no reflection upon the customer's credit. Lord Shaw once suggested that if there was on the face of the cheque any

reasonable ground for suspecting that it had been tampered with, it should be marked "Refer to drawer". In modern usage, however, this answer

may reflect adversely upon the customer's credit, and it would be safer to use the phrase "Alteration in ... (e.g. amount) requires drawer's

confirmation.

41. If a bank pays a cheque which has been altered without the customer's assent, then, as a general rule, the bank will be unable to debit the

customer's account and will have to suffer the loss itself, unless it can recover the money from the fraudulent person who made the alteration - a

very remote possibility in most cases.

42. By way of exception to the general rule, a bank will be entitled to debit its customer's account with the amount of an altered cheque where (a)

the customer did not exercise reasonable care in drawing his cheque and so facilitated an alteration of the amount, and (b) the alteration was not

apparent. This is the result of the decision of the House of Lords in *London Joint Stock Bank Ltd. v. Macmillan and Arthur* (1913 AC 777 ante,

para. 2-125)

43. Mr. Ghosh relied upon the negligent manner in which three officials of the bank each claimed to have verified the said cheque before

encashment and overlooked the apparent discrepancies on the cheque and acted negligently in allowing encashment of the said cheque.

44. The evidence of the handwriting experts clearly show that the signatures appearing on the said cheque are not the signatures of the trustees as

would appear from the Specimen Signature Cards and the admitted signatures taken into consideration by the said handwriting experts. I have also

considered the said signatures and agree with the opinions as expressed by the two handwriting experts in the report. The evidence of the

handwriting experts is also not demolished in cross-examination. Apart from anything else, it can be said without any hesitation, the bank could not

have ignored the conspicuous absence of the word "Limited" in the forged rubber stamp and the rubber stamp appearing under the forged

signature of the two trustees on the reverse of the said cheque. The bank has acted carelessly and negligently.

45. Accordingly, the plaintiffs shall be entitled to a decree for Rs. 7,50,00/- being the amount allowed to be encashed by the defendants. The

plaintiffs, however, shall not be entitled to any interest since the said amount was held in the current account and the plaintiffs have failed to

establish during trial that the plaintiffs have suffered any loss or damaged. In fact, there is no such evidence on record which would justify a claim

for interest. This view is also supported by a decision in *Babulal Agarwalla* (supra).

46. On a scrutiny of the evidence of the defendant No. 2 and as discussed earlier, in my view, the plaintiff has failed to establish that the defendant

No. 2 has stolen the cheque or was instrumental in withdrawing the money from the bank by either forging the signatures or the rubber stamp. The

defendant No. 2 was discharged in the criminal proceeding. In fact, no disciplinary action was initiated against the defendant No. 2 and he was

kept in suspension till he retired on January 2000. In fact, it appears that the plaintiff had to pay subsistence allowance to the defendant No. 2 of

about Rs. 1.52 lakhs and a suit has been filed by the defendant No. 2 against the bank being Title Suit No. 766 of 1995 for realization of its

pensionary and other benefits. The plaintiff has failed to make out any case against the defendant No. 2 and, accordingly the claim of the defendant

No. 2 is dismissed.

Let the decree be drawn up expeditiously.