Durga Shah Mohan Lal Bankers vs Governor General In Council And Ors. on 2 March, 1950

Equivalent citations: AIR1952ALL590, AIR 1952 ALLAHABAD 590

JUDGMENT

Desai, J.

1. This is an appeal by a plff. whose suit for the recovery of money has been dismissed by the Dist, J. of Kumaun on appeal. It was decreed by the trial Court, but the learned Dist. J. reversed the decree.

2. There is no dispute about the facts which, are as under. The plff. appellant, Messrs. Durga Sah Mohan Lal Sah, is a firm of bankers at Ranikhet. In 1940 'B' Company of the Queen's Royal Regiment, under the command of Major Phillips, was stationed at Dulikhet. On 31-5-1940 Lt. Lockyer of the Regiment in his official capacity drew a cheque for Rs. 716-13-0 on the Imperial Bank of India, Allahabad branch, payable to Major Phillips also in his official capacity, or bearer, & crossed it generally. He did not mark it as "not negotiable." He handed over the cheque to Major Phillips who endorsed it in blank on the back & gave it to Sgt. Pettiford: with direction to take it to Lt. Mausel to pay it into the local treasury. Sgt. Pettiford, contrary to the direction & apparently dishonestly, took it on 1-7-1940 to the plff. & asked it to cash it for him. The plff. at once paid him the amount of Rs. 716-13 0 & he went away. He disappeared & when Major Phillips knew about his disappearance with the cheque, he instructed the drawee bank at Allahabad not to honour the cheque if it was presented to it. The plff. handed over the cheque to the Allahabad Bank at Naini Tal for collecting the money. This bank sent it to the Imperial Bank at Allahabad which refused payment in accordance with the instructions of Major Phillips. The plff. communicated the fact of the refusal to Major Phillips & demanded the payment of the cheque by him. Major Phillips disowned all liability on the ground that as he was acting in official capacity he was not personally liable. The plff. addressed the Govt. but in vain, & after the necessary formalities instituted the suit which has given rise to this appeals against the Governor-General, Major Phillips & Lt. Lockyer.

3. The suit was jointly defended by the defts. Their sole contention was that the plff. was not justified in paying the cheque in cash to Sgt. Pettiford when it was a crossed cheque. Their contention was, & still is, that the plff should have paid it through a banker & not direct, & that the cheque was handed over to Sgt. Pettiford not to be cashed but to be paid into the treasury through Lt. Mausel. The trial Ct. took the view that the cheque was negotiable despite the crossing & was negotiated by Sgt. Pettiford to the plff. which acted in good faith & without negligence, that it became holder in due course of the cheque & that the defts were liable to pay the money to it. The learned Dist. J., on appeal, held that the plff. was not justified in paying the amount of the crossed cheque in cash to Sgt. Pettiford & did not act without negligence.

4. A cheque is under the law a negotiable Instrument. Its negotiability can be destroyed only if it is marked as "not negotiable" on its face; it is not destroyed by its simply being crossed whether generally or specially. The only effect of crossing a cheque is, as stated in Section 126, Negotiable Instruments Act, that the drawee bank must not pay it otherwise than to any banker if it is crossed generally, or to the particular banker if it is crossed specially There is no other effect of the crossing. In Carlon v. Ireland, (1856) 25 L. J. Q. B. 113, Coleridge J. stated at p. 114 :

> "It may be that the effect of the crossing is to require caution on the part of the person taking it, & to throw upon him the obligation of shewing that he had taken it bona fide, & had given value for it ; bat it cannot be carried further without interfering with the negotiability of the inst ument."

Lord Cairns C. said in Smith v. The Union Bank of London, (1875) 1 Q. B. D 31 at p. 34, that, "Whatever may have been the effect of a crossing, the negotiability of the cheque was not thereby restrained,"

5. Major Phillips gave the cheque to Sgt. Pettiford to take it to Lt. Mausel, but Sgt. Pettiford took it to the plff. & asked it to cash it for him. The plff. agreed & immediately paid the money in cash. As the cheque was payable to bearer & as the payee had already endorsed it in blank, any bearer of it could collect its money through a banker. The fact that Sgt. Pettiford's name was not endorsed on the cheque, did not prevent the plff. cashing it for him. The transaction between Sgt. Pettiford & the bank was simply that of negotiation of the cheque. Sgt. Pettiford transferred the cheque to the plff. & the plff. bought it from him. Since the plff. was not drawee of the bank, it cannot be Said that it honoured the cheque The learned Dist. J. fell into the error of confusing the plff. with a drawee bank & thought that the plff was not entitled to pay the money in cash at its counter. The plff. was a banker but was that banker through whom the drawee bank could pay the money to the payee or bearer ; it was not the banker who was bound by Section 126. The Imperial Bank at Allahabad could not pay the money in cash, but any other banker could pay the money in cash to its customer & then realise the money from the drawee bank. The learned Dist. J. does not appear to have stuck to the view that the plff. was not entitled to pay the money in cash. Towards the end of the judgment he observed :

> "If Major Phillips had presented this cheque & obtained' payment, there is no doubt that he would have been liable to the plff., but the fact that payment was made to an unauthorised person who was not the drawee does not, I think, help the plff."

> This suggests that he was of the opinion that inspire of the crossing the cheque could be paid in cash at the counter. Why it could not be so paid here was, according to him, that the recipient was not the payee but his agent. This distinction has no basis in law; the question whether a crossed cheque can be paid in cash or not does not depend upon whether the recipient is the payee or his agent. In case of a cheque payable to bearer there is hardly any distinction between the payee & a person who presents it for payment. Every holder of it is entitled to the payment at the drawee bank. In the case of Carlon the facts were very similar to those in the case at hand. X

> drew a crossed bearer cheque & gave it to C who crossed it in favour of D bank & gave it to his clerk L to take it to D. Instead of doing so, L gave it to I who got it cashed by his banker & handed over the money to L who decamped with it. C sued I to recover the money & his suit was dismissed on the ground that I was entitled as holder in due course to retain the money received by him through his banker from the drawee bank. Coleridge J. distinguished the case from Bellamy v. Majoribanks, (1882) 7 Ex., 389, where the question as to the validity of a crossed cheque arose between a customer & his banker & stated, at p. 114 :
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> "Here the question is, whether the party taking the cheque bona fide & for value is not the lawful holder, & entitled afterwards to receive the proceeds of the cheque; & by admitting the negotiability of the cheque, though crossed, it seems to me all objection is got rid of."

The facts in Smith's case also were similar. R drew a cheque on U bank & gave it to S. S endorsed the cheque in blank & crossed it in the name of his banker L. It was stolen from his possession by a thief who sold it for full value to C. C paid it into his bank which presented it to U bank for payment. XT paid the money to the banker. Subsequently S sued U for the money & he was held be not entitled to recover anything. Lord Cairns, C. stated the effect of the crossing to be this :

> "It imposes caution, at least, on the bankers. But, further, by its express words it alters the mandate, & the customer, the drawer, is entitled to object to being charged with it if paid contrary to his altered direction." (P. 35).
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> The cheque was crossed by S & not B who drew it & his Lordship distinguished between their rights in these words :
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> "He" '(the plff. S)' cannot maintain an action on the ground that the defts. have paid the cheque contrary to the statute, because, though an action lies by the person grieved where the provisions of a statute have been infringed, yet that is only when those provisions are for his direct benefit, & he has sustained loss by their infringement. Here the prohibition of payment except to a banker is for the direct benefit of the drawer,"

M'lean v. The Clydesdale Banking Co., (1883) 9 A. C 95 is the hightist authority for the proposition that a banker other than the drawee bank cannot be blamed for paying a crossed cheque in cash. M'lean drew a cheque payable Co T or order on S bank & crossed it in blank, T endorsed it & gave it to his banker C. C at once credited the amount of the cheque in the account of T which had already been overdrawn. Subsequently M stopped payment by S & when C presented the cheque to S for payment, S refused & the House of Lords decided that C being the onerous holder of the cheque was entitled to recover its money from M'lean. C had paid the cheque in cash to its customer T even though it was a crossed cheque & yet he was held entitled to recover its value from the drawer when the drawee bank refused to honour it As far as the question under discussion is concerned, there is nothing to distinguish the case at hand from M'lean's case. The plff., therefore, was not disentitled

merely on account of its having paid in cash.

6. Reference was made to Section 129 which makes a banker, paying a crossed cheque in contravention of the mandate involved in the crossing, liable to the true owner of the cheque. This makes the drawee bank responsible. It does not make the banker through whom the crossed cheque is paid responsible. The liability of the banker through whom the crossed cheque is paid is described in Section 131 to which I shall refer in due course. There are two bankers referred to in Section 129 & the bankers referred to in the opening words is the drawee bank. A cheque payable to bearer is negotiable by delivery under Sections 46 & 47. Sgt. Pettiford delivered the cheque to the plff. & this completed the negotiation. It is immaterial if he had no authority to negotiate the cheque or he did so in contravention of the direction given to him by Major Phillips. The plff. acted bona fide & paid the full valuable consideration for it. It had no knowledge of the direction given by Major Phillips to Sgt. Pettiford. It used to deal with military officers & cash their cheques. There was nothing suspicious on the face of the cheque & as it was a bearer cheque, the plff. could have paid it to anybody who brought it to it. The learned Dist. J. has relied upon the fact that the plff. did not know Sgt. Pettiford & had no instructions from Major Phillips to cash the cheque. The pltff. did not stand in need of any instructions in order to cash a bearer cheque & cannot be said to have acted dishonestly or even negligently by making the payment to a man not known to it. Pollock C. B. stated in Barber v. Richards. (1851) 86 R. R. 190, a full reference to which would be made later, that "a person who takes a bill endorsed generally is not bound to inquire whether the bill has been properly transferred or not."

The plff. knew Major Phillips & knew that Sgt. Pettiford had gone to it from Major Phillips. Through the negotiation the property in the cheque passed to the plff. which became entitled to sue upon it. Whether Sgt. Pettiford was a holder within the meaning of Section 8 or not, the plff. believed him to be a holder. He was the bearer of the cheque & as such, was thought by the plff. to be entitled to its possession in his own name & to receive or recover its amount. According to the defts. he was only their servant or agent, but the plff. did not know this & had no reason to know this. But whatever might have been the status of Sgt. Pettiford under the Act, the status of the plff. became that of a holder in due course as defined in Section 9. A cheque becomes payable when it is presented at the drawee bank. Here it had not been presented to the drawee bank before it was negotiated to the plff. & the amount mentioned in it had not become payable. The plff. had no sufficient cause to believe that any defect existed in Sgt. Pettiford's title. On the basis of Jai Narain v. Makbub Baksh, 28 ALL. 428 it was pleaded on behalf of the defts. that there is a distinction between a defect in title & no title such as where an endorsement is forged. In Vagliano Brothers v. Bank of England, (1889) 23 Q.B.D. 243, Lord Esher, M. R. stated at p. 248, that:

> "The Law merchant never recognised a forger of another man's name as a real merchantile drawer. There is in this case no real payee; the forging drawer cannot be recognised as the payee."

It cannot be said that Sgt. Pettiford had no title at all & he cannot be compared with a forger or a thief. He might have acted in fraud of his principal, but he had title to be in possession of the cheque. It is stated in Vagliano's case itself by Bowen L. J. at p. 225 that "if the bill is originally

payable to bearer it is an authority to pay the bill to the person who is the holder." Thus his possession itself was some title. He had no title to negotiate it & this absence was nothing but a defect in his title. There was no greater defect in his title than in the title of the clerk L in the case of Carlon or of the thief in the case of Smith or of the customer of S in Raphael v. Bank of England, (1855) 25 L. J. C. P. 33. In the last mentioned case S, who was a money-lender received in the course of his business from his customer a stolen bank-note. The fact that certain bank notes were stolen was advertised & notices containing the numbers of the stolen notes were distributed among money-lenders. S had got a notice & kept it on file. When he received the note from his customer, he did not look into the file to compare the numbers but accepted it. He could not get the money from the bank & sued it. His suit was decreed notwithstanding the fact that the note was a stolen one. I know of another case, Barber v. Richards, (1851) 86 R. R. 190, where the facts were quite similar. Edwards drew a bill upon the deft, who accepted it & then Edwards endorsed his name on the back of the bill & delivered it to Brown for the purpose of getting it discounted. Brown, instead of getting it discounted, pledged it for value with Tingey. Tingey sued for the money & his suit was decreed. Parke B. observed at p. 192:

> "Ever since the case of Collins v. Martin, (1797) 4 R.R. 752: (1 Bos. & P. 648, the rule of law has been that, when a bill is payable to bearer, any person who is the holder for value may sue upon it, whether the party from whom he has taken it had a title or not Here Edwards put his name on the back of the bill, & delivered it to his agent Brown, who disobeyed his order to get it discounted; but it cannot therefore be said that the property did not pass to the person to whom Brown delivered it for value. There was no proof of any fraud on the part of Tingey, & he must be considered as a bona fide holder." Pollock C. B. observed at p. 193:
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> "In this case as between Edwards & Tingey, there may have been no intention to give the latter a title; but there was an intention to give a title to the person to whom Brown might deliver it, & he delivered it to Tingey."

In Lee v. Newsham, (1823) 25 R. R. 788, a person who got a stolen cheque from a customer without criminal knowledge was given a decree against the drawer when the drawee bank transferee had dishonoured the cheque. In Ram Sarup v. Hardeo Prasad, 50 ALL. 309, Hardeo Prasad was held to be not a holder in due course of a cheque because the amount mentioned in it had become payable before he acquired property in it & there was sufficient cause for him to know that it was a stale cheque. The cheque was drawn on June 5, whereas he claimed to have acquired property in it on September 28. If a banker receives a crossed cheque from his customer in order to collect the money, he acts as a banker & agent of the customer, & not as holder in due course. He does not acquire any property in the cheque. But if the cheque is negotiated to him & the property in it passes to him, he becomes holder in due course & ceases to be the customer's banker or agent as regards that transaction. The distinction between a banker who merely acts as an agent of his customer & a banker who becomes a holder in due course must be kept in mind because the rights & liabilities of the banker in the two cases are different. If he acts merely as an agent to collect the money, he has no cause of action against the drawee bank if it refuses payment; the cause of action then remains in the customer. If he is the holder, he himself becomes entitled to sue. Section 131 protects a banker

who in good faith & without negligence receives payment for a customer of a crossed cheque when the title to the cheque proves defective. This provision is similar to that of Section 82, English Bills of Exchange Act of 1882. Capital & Counties Bank Ltd. v. Gordon, (1903) A. C. 240 is a case governed by Section 82, Bill of Exchange Act. Gordon was a holder of a crossed cheque payable to him or order. His servant J forged endorsement on it & give it to his banker C. C at once credited the amount to his account & J even drew money from the account. C had no suspicion of the forgery & obtained payment from Gordon's bank. Subsequently, Gordon sued C for the money & the House of Lords gave him a decree, because C was held not entitled to the protection of Section 82, Bill of Exchange Act inasmuch as he did not act as J's banker or agent. The law in India is slightly different; a banker is deemed to receive payment for a customer even though he credits his account with the amount before receiving payment. Further, the plff. is a banker by profession but did not stand in the relationship of a banker of Sgt. Pettiford who had no account with it. It was just an accident that it happened to be a banker by profession. Sgt. Pettiford could have got the money from any person whether a banker or not & the plff. merely on account of its following the profession of a banker, cannot be put in a worse position than any other person who could have paid the money in cash.

7. The provision that the person must have become possessor of a cheque "without having sufficient cause to believe" is more favourable to the person who claims to have become holder in due course than the words "acting bona fide." His claim would be defeated only if it is found that there was sufficient cause for him to believe that a defect existed. If he fails to prove bona fides or absence of negligence, it would not negative his claim. There must be evidence of positive circumstances on account of which he ought to have believed that some defect existed. In the present case there was no cause whatsoever for the plff.'s believing that any defect existed in Sgt. Pettiford's title. The learned Dist. J. was not right in attributing mala fides to the plff. on the ground of its so-called negligence in paying cash to a man unknown to it & without any written authority from Major Phillips. I have found that this act did not amount to negligence, but even if it did it does not matter at all. Lord Denman C.J. in Goodman v. Harvey, (1836) 4 A. & E. 870 at p. 876 stated :

> "Gross negligence only would not be a sufficient answer, where the party has given consideration for the bill."

The general rule, both at law & in equity, is that no person can acquire title, either to a chose in action or any other property from one who has himself no title to it; but a negotiable cheque is an instrument which "falls within that description of property to which a good title may be acquired by a party who takes it bona fide for value notwithstanding any defect of title in the party from whom it is so taken." (See Crouch v. The Credit Foncier Co. of England Ltd., (1873) 8 Q. B. 374 at p. 381.

Pollock writes in his "Principles of Contract," Edn. 10 at p. 225 :

> "The narrow doctrine which for a time prevailed, requiring a certain measure of caution, on the part of the holder, is now completely exploded. Nothing short of actual knowledge of the fact affecting his transferor's title or wilful &, therefore, dishonest inquiry will defeat the holder's title."

In Smith's case, Lord Cairns, C. argued :

> "If the statute had meant to prevent any person becoming lawful holder of a crossed cheque unless he derived title through lawful holders, this ought to have been, & might easily have been, expressed. If it meant that a man might be a lawful holder, but in no way entitled to the money--a not very intelligible proposition--this ought to have been expressed."

There is no such express provision in the Act & the plff. must be held to be a holder in due course. Section 80 makes a drawer of a cheque liable, in case of dishonour by the drawee, to compensate the holder. Section 35 makes every endorser & deliverer of a cheque liable to a subsequent holder case of dishonour by the drawee. Section 36 makes every prior party to a negotiable instrument liable thereon to a holder in due course until the instrument is duly satisfied. A maker or endorser of a cheque payable to bearer is discharged from liability when he makes payment in due course. When the drawee bank refuses to pay, it is the drawer & every other prior party that is responsible to satisfy the holder's claim. Therefore, Major Phillips & Lt. Lockyer, the endorser & the drawer respectively of the cheque, & the Govt. as whose agents they have acted, are all liable to the plff.

8. I would, therefore, hold that the appeal must be allowed, the decree of the learned Dist. J. should be set aside & that of the learned Addl. Civil Judge should be restored with costs of both appellate Cts.

Mushtaq Ahmad, J.

9. I agree in the order proposed.