**Dogra v Barclays Bank**

**Division:** High Court of Kenya at Nairobi

**Date of judgment:**

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**Case Number:** 481/1965

**Before:** Rudd J

**Sourced by:** LawAfrica

*[1] Defamation – Libel – Cheque – Refer to drawer – Words not defamatory.*

*[2] Banking – Banker and customer – Negligence – Failure to credit account – Whether negligence.*

*[3] Damages – Contract – Breach of – Failure by banker to credit customer’s account – Nominal*

*damages.*

**JUDGMENT**

**Rudd J:** The facts of this case are quite simple. The plaintiff’s name is Mohanjeet Singh Dogra. He is a

Sikh, which accounts for the name Singh and Dogra in his surname. Mohanjeet is his first name in a similar sense to what is called a Christian name. Using one’s common sense and general knowledge, I expect that amongst his family and people with whom he is on very familiar terms, he is familiarly known as Mohanjeet. Others could well call him Mohanjeet Singh, but his real proper name is Mohanjeet Singh Dogra, which can be shortened by the use of initials to M. S. Dogra. Putting his surname first, as is sometimes done for some purposes, he could be called Dogra, M. S. or Dogra, Mohanjeet Singh. But he could never properly be called Mohanjeet, S. D. He had a current account with the Government Road, Nairobi Branch of the defendant bank in the name of Mohanjeet Singh Dogra, or, putting the surname first as is done on the specimen signature card, Dogra Mohanjeet Singh and the specimen signature is M. S. Dogra. The plaintiff is and was employed by the Kenya Police and on his instructions his salary was to be paid by his employers into his current account at the bank towards the end of each calendar month. For some unexplained reason, his employers used to instruct the bank to credit his account under the name Mohanjeet, S. D. The procedure followed was for the police accountant to make out a cheque in favour of the particular branch bank for the total amount of the salaries of the police employees which were to be paid into that branch bank and to send the cheque to the branch with a list setting out the names of the said employees and the amounts that were to be credited to their accounts at the branch bank. On receipt of these documents a bank official would enter the amount to be credited on the particular police employee’s permanent voucher card. This card would then go to the ledger section for the entry to be pasted in the employees account. According to past practice, the plaintiff’s voucher card was kept in the name of Mohanjeet, S. D., which was the name as stated in the list sent to the bank with the police salary cheque. The plaintiff’s ledger account was kept in the name of Mohanjeet Singh Dogra. In addition to his monthly salary, other credits were entered in the plaintiff’s bank account on foot of lodgments made casually from time to time by the plaintiff personally. Such lodgments were made in the name of Mohanjeet Singh Dogra or M. S. Dogra. In spite of the difference between the name in which plaintiff’s bank account was kept and the name under which his salary was remitted to the bank all payments of his salary up to the end of December 1964 were credited in his current account. Clearly someone connected with the ledger department knew or was able to deduce that salary paid by the police for Mohanjeet S. D. should be credited to the plaintiff’s account. I think that the person with that knowledge must have been the person whom Mr. DeSilva replaced in January 1965. After the police salary cheque was received towards the end of January 1965, the permanent voucher card in the name of Mohanjeet S. D. came to Mr. DeSilva who could not trace the proper account in which the credit should be posted. DeSilva placed this credit in a suspense account and made enquiries of the police which were not immediately successful. Towards the end of January 1965, the plaintiff, in anticipation of his account being credited with his salary for January 1965, made out two cheques dated 1 February 1965, one for Shs. 200/- in favour of Kenya Esso Service and the other for Shs. 250/- in favour of Mr. R. K. Joshi. Unless the plaintiff’s account was credited with his January salary, there was not enough credit in his account to allow either of these cheques to be paid. On the other hand if his January salary had been credited in the account there would have been ample credit for the payment of both these cheques. Since the January salary was not credited at that time both cheques were dishonoured on presentment and marked ‘refer to drawer”. The dishonour of Mr. Joshi’s cheque was published to Mr. Joshi and to Santok Singh Assi, the dishonour of the other cheque was published to Mr. R.C. Patel, then the manager of Kenya Esso Service. When the plaintiff discovered that these two cheques had been dishonoured he made enquiries and discovered the reason. He saw the sub-manager of the branch bank and his account was credited with his January salary. He also saw Santok Singh Assi and Mr. Patel to each of whom he explained what had happened and each accepted his explanation. He drew two fresh cheques in place of the dishonoured cheques and gave Mr. Assi the one for Mr. Joshi and Mr. Patel the cheque for Kenya Esso Service getting back the two cheques which had been dishonoured. No special damage has been pleaded and the only special damage in fact was the loss of the two replacement cheques. No other damage was proved except the inconvenience of having to go to the bank to get his account straightened out and the trouble of going to see and explain the position to Mr. Assi and to Mr. Patel. His explanations were accepted and I do not consider that his credit was materially adversely affected. He sues the bank for damages for breach of contract and for libel. Two innuendos were pleaded of which the second was withdrawn at the trial. The first innuendo alleged that by the words “refer to drawer”, the defendant “meant and was understood to mean and imported to any who read them placed in that situation that the plaintiff has drawn a cheque upon account which it knew or ought to have known was not in credit to the amount of that cheque and he was unable to pay the amount of the cheque and that meant to a reasonable being that it was unsafe to give credit to him”. In my opinion that innuendo has not been proved. The gravamen of it has not been proved. When a banker dishonours a cheque and marks on it “refer to drawer”, he is indicating that the bank will not honour the cheque on the instant presentment and that the person who presented it and other persons concerned should get in contact with the person who made the cheque for any explanation required or in order to decide his further course of action. This procedure is usually adopted when the amount of credit or facilities arranged in respect of the particular account are not sufficient to enable the bank to pay the cheque at the time when the cheque was presented for payment. Such an endorsement does not indicate the reason why the account was insufficient to enable the cheque to be paid. It does not indicate whether or not the maker of the cheque ought to have known that the account and facilities were not sufficient to enable the cheque to be met and it relates only to the instant presentment of the cheque. The words were not published in any sort of connexion or relation with the plaintiff’s profession, trade or calling as a police officer and nothing is pleaded as to any such connexion or relation. If they are to be held to be libellous, it must be shown that in the circumstances of the publication they subjected the plaintiff to hatred, ridicule or contempt. In my opinion these words do not subject the plaintiff necessarily to hatred, ridicule or contempt. They do not indicate that there may not have been some reasonable, perfectly satisfactory and completely innocent explanation as regards the plaintiff’s conduct as is the case in these two particular instances and no doubt in many other instances where those words are put on a dishonoured cheque. In my view the action insofar as it is based on libel must fail. As regards the claim on the basis of breach of contract, it was argued for the defence that on the basis pleaded the contract to credit the account was only as between the bank and the plaintiff’s employers and that there was no breach of any contract between the bank and the plaintiff and no claim laid on the basis of negligence. I think that argument is an oversimplification of the matter. I think that in the contract of banker and customer as between the plaintiff and the defendant there was necessarily an implied term that the bank would be reasonably diligent and efficient in keeping the account, in applying to it all proper credits and honouring all cheques drawn on the account when it was in sufficient credit. If the bank was negligent in failing to give the plaintiff’s account its proper credit then I think that the plaintiff could succeed on the basis of breach of contract. On the face of the facts, in this case, the instruction to the bank from the police to credit the plaintiff’s account with the amount of his salary in respect of January 1965 did not correctly state the proper name of the plaintiff or the proper name under which his account was kept by the bank. *Prima facie* there being genuine doubt as to the particular account to which this money was to be credited, it would be proper to place the money in a suspense account while enquiries were being made. That is what was done, but in the circumstances of this case some further consideration is necessary in view of the fact that for some considerable time before the end of January 1965 credits were duly and properly made in the plaintiff’s account on the same form of instructions as was used in connexion with the salary for January 1965. The onus of proving a breach of contract lies firmly on the plaintiffs. It has been proved in the case of previous salary credits, someone then dealing with the matter at the bank knew or was able to deduce that such credits were to be posted in the plaintiff’s account. The question then is does that fact necessarily imply that someone in the bank dealing with this particular credit ought to have known that the credit was to go into the plaintiff’s account? This is in my view a question of fact and the answer must depend on the circumstances. In the case of the previous credits there is nothing to indicate how it was known or discovered that they were to go into the plaintiff’s account. It occurs to me that if one had the sort of mind which delights in solving conundrums one could possibly arrive at the solution in this way. The suffix “jit” or “jeet” in the name Mohanjeet sometimes, and I think most often, occurs among Sihks, therefore Mohanjeet was probably a Sikh. The initial S would then stand for Singh, and the initial D would be the first letter of his surname. Reference to the ledger accounts under the initial D could then lead to the plaintiff’s account in the name of Mohanjeet Singh Dogra who was employed by the police. I do not know if some such process of thought led to the identification in the case of the previous credits for salary. If so I think the person concerned could be congratulated on his powers of deduction, but I do not think that the bank was necessarily bound to employ a man with knowledge that the suffix “jit” or “jeet” probably indicated a Sikh, in order that proper credits should be given to the plaintiff’s account without further enquiry. Nor do I think that from the fact that an employee of the bank dealing with earlier transactions happened to know or discover that the credits were to go to the plaintiff, it necessarily follows that other employees of the bank dealing with a later credit should necessarily have the same knowledge or be able to deduce it. This is a matter which depends on circumstances, and in the present case I do not think that the circumstances establish negligence or breach of contract to the plaintiff on the part of the bank. I therefore dismiss the suit with costs. If I had found for the plaintiff either on the basis of libel or of breach of contract or both, I would have assessed the total damages at Shs. 100/- and given judgment accordingly with costs on the subordinate court scale, but for the reasons given I dismiss the suit with costs. *Order accordingly.*

For the plaintiff:

*BC Syal*

For the defendant:

*JA Couldrey* (instructed by *Kaplan & Stratton*, Nairobi)