

PUNJAB NATIONAL BANK V. RAM GOPAL & ANR.

1. PUNJAB NATIONAL BANK

Through Its Branch Manager, Mr,G.K Chaurasia Khoje Gate Road
Bundi Rajasthan

.....Petitioner(s)

Versus

1. RAM GOPAL & ANR.

S/o Sh Dwarka Lal Prop M/s Ram Gopal Radhey Shyam Nai
Dham Mandi Bundi Rajasthan

2. Sh Gopu Chaudhary @ Banwari, S/o Sh Radha Krishan
Niraya Hoshangabad M.P

.....Respondent(s)

Case No: REVISION PETITION NO. 3840 OF 2012

Date of Judgement: 04 Jan 2023

Judges:

HON'BLE MR. SUBHASH CHANDRA, PRESIDING MEMBER

For the Petitioner : Mr Ghanisht, Proxy Counsel with Authority
Letter

For the Respondent : For Respondent no.1 Mr S N Bohra,
Advocate

For Respondent no.2 Ex parte

Facts:

Respondent no. 1 Ram Gopal is proprietor of M/s Ram Gopal Radhey Shyam having bank account with Punjab National Bank (PNB). On 20.12.2005, Ram Gopal informed PNB that 4 unsigned

cheques were stolen from his cheque book by respondent no. 2 Gopu Chaudhary on 12.12.2005. FIR no. 542/05 lodged. PNB asked not to honour these cheques. However, cheque no. 657687 for Rs. 9 lakhs had already been presented at PNB branch in Bhopal on 15.12.2005 and encashed. Police recovered Rs. 6.91 lakhs from premises of Gopu Chaudhary based on FIR 542/05. Ram Gopal filed consumer complaint against PNB alleging deficiency in permitting encashment of cheque with forged signature and sought refund of balance Rs. 2.09 lakhs. District Forum dismissed complaint holding that while criminal aspect of forgery not tenable before it, no deficiency of service by PNB established as responsibility of safeguarding cheques was of Ram Gopal. On appeal by Ram Gopal, State Commission allowed appeal and held PNB deficient for not verifying properly before encashing bearer cheque of large amount presented outstation without PAN details. Directed PNB to pay balance Rs. 2.09 lakhs. PNB has filed this revision petition against the State Commission order.

Arguments by PNB:

Responsibility for keeping cheques safely is of Ram Gopal. Theft/loss of cheques has to be acknowledged by him. Ram Gopal cannot shift consequential loss due to his negligence onto PNB alleging deficiency of service. No requirement of PAN verification before encashing cheque. State Commission erred in holding PNB non-compliant on this. No deficiency if PNB did not re-verify signature on outstation multi-city cheque as purpose of such account is encashment at par without charges. Recovery of Rs. 6.91 lakhs from Gopu Chaudhary does not make PNB liable to pay balance amount. Ram Gopal has to pursue other remedies.

Arguments by Ram Gopal:

PNB liable for deficiency in encashing cheque without verifying signature properly. Recovery of Rs. 6.91 lakhs from Gopu Chaudhary shows PNB did not exercise due diligence. Being

outstation bearer cheque of large amount, PNB ought to have re-verified from Ram Gopal before encashing.

Court's Opinion:

Responsibility of security of cheques is of Ram Gopal. He cannot absolve himself and shift loss to PNB as deficiency of service. No requirement of PAN verification for encashing cheque. State Commission clearly erred in holding PNB non-compliant. No merit in argument that PNB should have re-verified outstation multi-city cheque. Purpose is encashment at par without charges. Recovery of Rs. 6.91 lakhs does not make PNB liable to pay balance amount to Ram Gopal. He has to pursue other remedies. Impugned order by State Commission directing PNB to pay Rs. 2.09 lakhs to Ram Gopal is unsustainable.

Sections:

Revision petition filed under Section 21(b) of Consumer Protection Act, 1986.

Cases Referred:

Rosali vs Syndicate Bank 2018 (1) CTC 441: Bank not responsible for honouring cheque with lookalike signatures. Conduct of account holder estops questioning bank. Prempreet Textiles Industries Ltd vs Bank of Baroda and Ors 2006 (3) CPK 218: If employee embezzles cheque, bank not responsible as it is duty of account holder to keep cheques safely. Kerala State Cooperative Bank Ltd vs State Bank of India, Kerala HC: Same principle. Pranenda Mohan Das vs Central Bank of India, Calcutta HC: Same principle.

Court's Final Decision:

Revision petition has merit and is allowed. Impugned order by State Commission directing PNB to make payment set aside.

Full Text of Judgment:

1. This revision petition filed under section 21 (b) of the Consumer Protection Act, 1986 (in short, the 'Act') assails the order of the State Consumer Dispute Redressal Commission, Rajasthan, Jaipur (in short, 'State Commission') in Appeal No. 1734 of 2010 dated 05.07.2012 emerging from order in consumer complaint no. 239 of 2007 of the District Consumer Disputes Redressal Commission, Bundi, Rajasthan (in short, 'District Forum') dated 14.07.2010.

2. The brief facts of the case as stated by the petitioner are that respondent no. 1 is the proprietor of M/s Ram Gopal Radhey Shyam who had a bank account no. 4089002100000079 with the petitioner with a multi-city cheque facility. The respondent no. 1 intimated the petitioner on 20.12.2005 that four unsigned cheques (nos. 657687, 657688, 657689 and 657690) were stolen from his cheque book by respondent no. 2 on 12.12.2005 for which an FIR No. 542/05 was lodged with the Police Station, Kotwali, Bundi. The petitioner issued instructions not to honour any of these cheques on 20.12.2005. However, cheque no 657687 for Rs.9,00,000/- had already been presented at a branch of the petitioner Bank in Bhopal and encashed on 15.12.2005. Based upon police enquiry in FIR 542/05 filed by the respondent no.1, Rs.6,91,000/- was recovered from the premises of respondent no. 2 who was a close associate of respondent no.1 and was visiting him on the day of the theft of the cheques. Respondent no. 1 filed a consumer complaint before the District Forum against the petitioner alleging deficiency in service in permitting the encashment of the cheque based on a forged signature and seeking refund of Rs.2,09,000/-. After hearing both parties, the District Forum dismissed the complaint holding that while a criminal case involving forgery was not tenable before it, there was no ground to establish deficiency in service by the petitioner/opposite party as the responsibility of

safeguarding the cheques was that of the respondent no. 1/complainant. The District Forum held that there was no deficiency in service in the encashing of the cheque presented before it and therefore dismissed the complaint. Respondent approached the State Commission in appeal against this order which allowed the same and held that: Generally, at the time of making such big payment through bearer cheque Bank acts very carefully, but in present matter the payment making bank ought to have acted most carefully while making payment and further the check was of a firm of Bundi station and it was presented at Bhopal for payment, so it was natural for the Bank to be suspicious at the time of making payment whether a firm can issue bearer check for such a big amount or not and Bank ought to have sought information immediately. It was a big amount of Rs 9,00,000/-, so it was not possible to make payment without PAN number and in this way the Bank was not reasonably vigilant and careful while making payment. The Bank did not suspect the bearer cheque of such big amount when it is proved in police investigation and in FSLI report that the payment was withdrawn by forged documents and the police has recovered around Rs 7,00,000/-. In this matter we believe that if the Bank would have been a little careful in making payment of such big amount by bearer cheque, this incident would not have occurred. In this way, deficiency in service on the part of Bank is proved. The conclusion of learned district forum that complainant has failed to prove the deficiency in service of the bank is not justified. Appeal is acceptable. Accordingly this appeal is accepted. Order of learned District Forum is set aside. The complainant is entitled to recover the balance amount of cheque payment, which the police could not recover, from the respondent Bank. The payment of this amount shall be made by respondent Bank to the appellant within one month from the date of order. The complainant shall be entitled to recover Rs 20,000/- for mental torture and litigation expense from the Bank. This order is to be complied with in one month else the entire amount shall be recoverable with interest at 9% per annum. This order has been impugned

before us.

3. On behalf of the respondent no.1 it has been contended that the petitioner is liable for deficiency in service in having encashed a cheque without verifying the signature. It is also argued that the cheque was wrongly allowed to be encashed as proved by the recovery of Rs 6,91,000/- from the house of respondent no. 2 as a consequence of police investigations following filing of FIR No. 542/05. It has been alleged that the Bank ought to have verified the signature more carefully before allowing the cheque to be encashed.

4. I have heard the learned counsels for the petitioner and respondent no. 1 and perused the material on record carefully. Respondent no.2 continued to remain unrepresented.

5. It is not disputed that the theft of the cheques occurred on 12.12.2005. It is also not in dispute that the intimation of the theft/loss of the cheques was intimated to the Bank by the respondent no.1 on 20.12.2005. The responsibility of keeping cheques in safe custody is that of respondent no. 1. Therefore, the responsibility for the theft/loss of the cheques has to be acknowledged by the respondent no. 1 to be its own . However, it is seeking to be compensated on the ground that the Bank did not verify with respondent no. 1 before encashing the cheque presented before it and claiming deficiency in services by the Bank. The impugned order of the State Commission has held that the Bank to be liable for deficiency in service since it did not exercise due diligence in processing a bearer cheque for a large amount of Rs 9,00,000/- presented at a branch outside the city where the account was held. It has held that necessary verification of PAN card details was also not done before encashing the cheque.

6. The petitioner has placed reliance on Rosali vs Syndicate Bank 2018 (1) CTC 441, wherein it was held that:

“.....Therefore, the conduct of the respondent Bank estops her from questioning the bank for honoring the cheques of the plaintiff. Even if it is not signed by her, but due to lookalike signatures, the bank cannot be held responsible.....”.

Reliance is also placed on Prempreet Textiles Industries Ltd., vs Bank of Baroda and Ors. – III (2006) CPK 218 (NC), wherein this Commission held as under:

“.....It was the duty of the above Director to have ensured that the cheque book was kept under the locked key at a safe place. In this backdrop, there was hardly any occasion for the respondent Bank to be doubted the genuineness of the signatures on the cheque in question if any embezzlement was made by the employee of company the respondent Bank cannot be held responsible for it.”

Petitioner has also placed reliance on the orders of the Hon'ble High Court of Kerala in Kerala State Cooperative Bank Ltd., vs State Bank of India – Manu/KE/0286/2017 as well as order of the Hon'ble High Court of Kolkata in Pranenda Mohan Das vs Central Bank of India – AIR 1978 CAL 55 in support of his case wherein it was similarly held.

7. The respondent, on the other hand, contended that the petitioner was responsible for exercising due diligence in encashing the cheque.

8. I find myself unable to be persuaded by the reasons of the State Commission in the impugned order. Firstly, the responsibility of the security of the cheques issued by the Bank is that of the respondent no. 1. He cannot absolve himself and try and shift any consequential loss to the petitioner on ground of deficiency in service. Secondly, there is no requirement of verification of PAN details before encashing a cheque in a Bank. The State Commission has clearly erred in holding that the Bank did not comply with this 'requirement'. Thirdly, the ground that as the cheque was an out-station cheque, the bank should have verified the same from the respondent no. 1 does not carry any conviction since the objective of a multi-city account is to enable encashing of cheques from such an account at par, without charges. Lastly, the fact that there was a recovery of Rs.6,91,000/- from respondent no. 2 by the police does not make the petitioner liable for repaying the balance Rs.2,09,000/- to the respondent. The respondent would need to pursue other

legal remedies, if any, for the same. The petition is therefore liable to succeed.

9. In the light of the above, I find merit in the revision petition. The petition is accordingly allowed and the impugned order of the State Commission is set aside.