2022 INSC 156

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 8775-8776 OF 2016

PRADEEP KUMAR AND ANOTHER ..... APPELLANT(S)

VERSUS

POST MASTER GENERAL AND OTHERS ..... RESPONDENT(S)

J U D G M E N T

SANJIV KHANNA, J.

The aforementioned civil appeals preferred by Pradeep Kumar and Raj Rani (hereinafter wherever required referred to as 'the appellants') assail the judgment dated 15th May 2015 passed by the National Consumer Disputes Redressal Commission, New Delhi, the 'NCDRC' for short, whereby their complaint registered as Consumer Case No. 148 of 2001 against the Post Master General, U.P. Circle, Lucknow, Uttar Pradesh, Senior Superintendent of Posts, Lucknow Division, Post Master, Head Post Office Chowk, Lucknow and M.K. Singh, Sub-Post Master, Post Office, Yahiyaganj, Lucknow (hereinafter wherever required

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collectively referred to as ‘the respondents’) has been dismissed, *albeit* allowed and decreed against Rukhsana.

2. The appellants during the years 1995 and 1996 had purchased Kisan Vikas Patras, ‘KVPs’ for short, in joint names from various post offices located in the State of Uttar Pradesh in different denominations and with varying dates of maturity. The combined face value on maturity was Rs.32.60 lacs; however, the KVPs were encashable at the post offices before the maturity date at a lower value after the stipulated/lock-in period of holding.

3. As per the appellants, in the last week of February 2000, they had approached the Post Master, Head Post Office Chowk, Lucknow, with the request to transfer the KVPs to the Chowk Post Office, Lucknow. The appellants were asked to apply with the Chowk Post Office. They were informed that the transfer request would be allowed after due verification of the KVPs and the identity/signatures on the transfer application from the record with the issuing post office. The process, they were forewarned, being time-consuming and cumbersome would require several visits to the post office. The Post Master, Head Post Office Chowk, Lucknow had recommended that they take services of Rukhsana, an agent appointed by the State of Uttar Pradesh and associated with the

post office. As per the appellants, they were misled to believe that without the help of an agent like Rukhsana the transfer would not be possible and she would take care of their interest. Rukhsana, during the interaction, had informed the appellants that she had been working and associated with the post office for fifteen years, and being aware of the procedures would get the transfer effected without difficulty. On 03.03.2000, Rukhsana came to the residence of the appellants, and as instructed, the appellants signed the original KVPs on the backside and handed them over to Rukhsana. She also took the Monthly Income Scheme (MIS) passbook stating that it was required to process the transfer. Rukhsana executed a receipt and gave it to the appellants confirming receipt of the KVPs.

4. Rukhsana did not on her own revert to the appellants and when contacted had assured them apropos the transfer. Meanwhile, appellant No.1, i.e. Pradeep Kumar, had to leave Lucknow to join the official duty in Motihari, Bihar. Raj Rani, the second appellant, remained in touch with Rukhsana, who had informed that the process was taking time.

5. In June 2000, the appellants learnt that Rukhsana had cheated several investors and had been arrested by the police. Thereupon, the appellants made enquiries and discovered that the KVPs had

been encashed from the Yahiyaganj Post Office and Lal Bagh Post Office. A sum of Rs. 25,54,000/- was paid in cash to Rukhsana, who had pocketed the entire amount. The appellants state that their enquiries reveal involvement of M.K. Singh, Sub-Post Master, Post Office, Yahiyaganj, the fourth respondent before us, who, contrary to the rules, had paid the maturity proceeds in cash and not by cheque in the names of the appellants. Underpinning the argument are the Kisan Vikas Patra Rules, 1988, '1988 Rules' for short, and the Post Office Saving Bank Manual (Volume II), which we will refer to and delineate later.

6. The appellants made several representations to which the respondents did not respond, whereupon they filed the aforesaid complaint under the Consumer Protection Act before the NCDRC, praying that the respondents and Rukhsana should be directed to pay the appellants Rs. 25,54,000/- along with interest @ 18% per annum. Additional prayer was for compensation of Rs. 1,00,000/- on account of the mental agony and harassment along with interest @ 10% per annum and Rs.10,000/- by way of litigation expenses.

7. The respondents in the written statement contested the complaint. They had *inter alia* pleaded that the appellants, having signed the KVPs in token of receipt of the discharge value, cannot complain.

Rukhsana was not an agent appointed by the post office. The contract and understanding were between the appellants and Rukhsana, and the fraud having been committed by Rukhsana in her individual capacity, the respondents are not vicariously liable. Reference was made to the instructions issued by the Ministry of Finance, Government of India *vide* letter No. F3/37/91-NS II dated 8th November 1993, which we would allude to subsequently. M.K. Singh, Sub-Post Master, Post Office, Yahiyaganj, Lucknow filed a separate written statement pleading that the complaint was not maintainable as he had paid the amount to the right person and there was a valid discharge. He had not violated the law. M.K. Singh referred to a criminal case already pending against him and that the consumer complaint was not maintainable.

8. Rukhsana, after entering appearance, did not file her defence. She was proceeded ex parte. Rukhsana was prosecuted and convicted on the charges of cheating, criminal breach of trust, etc.

9. In the impugned judgment, the NCDRC, while accepting that some negligence could be attributed to the respondents in making the payment, dismissed the complaint against the respondents holding that they had acted in accordance with Rules 14 and 15 of the 1988 Rules. Rule 19, requiring payment by cheque when discharge value

is more than Rs. 20,000/-, came into force and is effective from 28-29th August 2001, whereas in the present case, the KVPs were encashed at an earlier point of time. Further, the appellants had not been truthful as it was difficult to fathom as to why they had signed and acknowledged payment on the backside of the KVPs and thereafter the KVPs were given to an unknown agent. The appellants, having done so, acted with open eyes and at their own peril and risk. The claim that the KVPs were handed over to Rukhsana without transfer application is unbelievable as appellant No.1 is a well-educated person. The appellants had remained silent for three months and did not make enquiries from the Post Office, Yahiyaganj located merely 800 metres from their residence. The appellants being negligent, the complaint against the respondents, including the fourth respondent, was dismissed. Rukhsana, being a service provider, was held liable to pay Rs. 25,54,000/- with interest @ 9% per annum from the date of release of amount from the post office till the date of realisation by the appellants. Rukhsana was also liable to pay Rs. 1,00,000/- as compensation and Rs. 10,000/- as litigation expenses. If the appellants are unable to recover the amounts due from Rukhsana, they (the appellants) were at liberty to sue the state government for its omission and commission in appointing Rukhsana as an agent.

10. Rukhsana has neither entered appearance before us to contest this appeal nor has challenged the judgment allowing the complaint against her, which has attained finality.

11. Section 3[1] of the Negotiable Instruments Act, 1881, 'NI Act' for short, states that a 'banker' includes any person acting as a banker and any post office savings bank. In terms of this section, a post office savings bank is a banker under the NI Act.

12. KVPs issued by the post office are a promissory instrument as defined by Section 4[2] of the NI Act, as it is an unconditional undertaking signed by the maker to pay a certain sum of money to, or to the order of a certain person, or the bearer of the instrument.[3] Section 13[4] of the NI Act states that a negotiable instrument may

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[1] 3. Interpretation-clause.—In this Act— 4 * * * * * "Banker".—5 ["banker" includes any person acting as a banker and any post office savings bank;

[2] 4. "Promissory note."—A "Promissory note" is an instrument in writing (not being a bank-note or a currency-note) containing an unconditional undertaking, signed by the maker, to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument.

[3] In the present case, we are not required to examine whether a KVP would be a 'bill of exchange' in terms of Section 5 of the NI Act.

[4] 13. "Negotiable instrument".— (1) A "negotiable instrument" means a promissory note, bill of exchange or cheque payable either to order or to bearer.

Explanation (*i*).—A promissory note, bill of exchange or cheque is payable to the order which is expressed to be so payable or which is expressed to be payable to a particular person, and does not contain words, prohibiting transfer or indicating an intention that it shall not be transferable.

Explanation (*ii*).—A promissory note, bill of exchange or cheque is payable to bearer which is expressed to be so payable or on which the only or last endorsement is an endorsement in blank.

Explanation (*iii*).—Where a promissory note, bill of exchange or cheque, either originally or by endorsement, is expressed to be payable to the order of a specified person, and not to him or his order, it is nevertheless payable to him or his order at his option.

be payable either to order or to bearer. A negotiable instrument is payable to order, which is expressed to be so payable or which is expressed to be payable to a particular person but does not contain words prohibiting transfer or indicate an intention that the instrument shall not be transferable. It is an accepted position that KVPs are negotiable instruments in terms of Section 13 of the NI Act. Sections 15 and 16 of the NI Act define 'indorsement', 'indorsee', 'indorser' and 'indorsement in blank' and 'in full'. Indorsement for the purpose of negotiation is made by the maker or holder of the negotiable instrument when he signs on the back or face of thereof, on a slip of paper annexed thereto or on a stamp paper for the purpose of negotiation. The person signing is called the indorser. If the instrument is signed by the indorser in his name only, it is an indorsement in blank. If the indorser also specifies the person to whom payment is to be made, the indorsement is said to be 'in full', and the person so specified is called the indorsee.

13. Sections 78 and 82 of the NI Act read:

> "78. To whom payment should be made.—Subject to the provisions of section 82, clause (c), payment of the amount due on a promissory note, bill of exchange or cheque must, in order to discharge the maker or acceptor, be made to the holder of the instrument."

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(2) A negotiable instrument may be payable to two or more payees jointly, or it may be made payable in the alternative to one of two, or one or some of several payees.

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> 82. Discharge from liability.—The maker, acceptor or indorser respectively of a negotiable instrument is discharged from liability thereon— (a) by cancellation.—to a holder thereof who cancels such acceptor's or indorser's name with intent to discharge him, and to all parties claiming under such holder; (b) by release.—to a holder thereof who otherwise discharges such maker, acceptor or indorser, and to all parties deriving title under such holder after notice of such discharge; (c) by payment.—to all parties thereto, if the instrument is payable to bearer, or has been indorsed in blank, and such maker, acceptor or indorser makes payment in due course of the amount due thereon."

14. Section 78 states that when payment is to be made to the 'holder' of the instrument, which would include his accredited agent such as a banker acting as an agent for collection,[5] the maker or acceptor is discharged from liability. However, Section 78 is subject to and does not apply to payments covered under clause (c) to Section 82 of the NI Act. Clause (c) to Section 82 applies to an instrument payable to the bearer or has been indorsed in blank, and in such cases the maker, acceptor or indorser of a negotiable instrument is discharged from liability when such maker, acceptor or indorser makes 'payment in due course' of the amount due thereon. The expressions 'holder' and 'payment in due course' are 'terms of art'

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[5] See *Maddali Tirumala Ananta Venkata Veeraraghavaswami* v. Srimat Kilambi *Mangamma and Another,* AIR 1940 Mad. 90 and *Raghubir Mahto* v. *Ramasray Bhagat,* AIR 1939 Pat.347 and also pg. 533 of *Bhashyam & Adiga* on The Negotiable Instruments Act, 22nd Edition (2019).

as Section 8 defines the expression ‘holder’, whereas Section 10 defines the expression ‘payments in due course’. On a harmonious reading of Section 78 and clause (c) of Section 82, it follows that different principles apply for discharge from liability when the negotiable instrument is payable to bearer or has been indorsed in blank, in which case payment must be made in terms of Section 10, whereas when the negotiable instrument is payable to order, the maker, acceptor or endorser would be discharged from liability when payment is made to the ‘holder’ of the instrument.

15. Section 8 of the NI Act, defines the expression ‘holder’ as:

> “8. “Holder”.—The “holder” of a promissory note, bill of exchange or cheque means any person entitled in his own name to the possession thereof and to receive or recover the amount due thereon from the parties thereto. Where the note, bill or cheque is lost or destroyed, its holder is the person so entitled at the time of such loss or destruction.”

The requirements of Section 8 are two-fold, and both requirements have to be satisfied. A holder means a person (i) entitled to possession of a promissory note, bill of exchange or a cheque, and (ii) entitled to sue the maker, acceptor or indorser of the instrument for the recovery of the amount due thereon in his name[6]. Thus, a person who is in possession of the instrument but

[6] In the context of the present case, we need not examine the controversy and difference of opinion on the issue of Benami owner, which aspect and issue have been the subject matter of several

has no right to recover the amount due thereon from the parties thereto is not a 'holder'. On a harmonious reading of Sections 8 and 78, it follows that payment made to a person in possession of the instrument, but not entitled to receive or recover the amount due thereon in his name, is not a valid discharge.

16. Before we reproduce and refer to Section 10, distinction is required to be drawn between 'holder' and 'holder in due course', an expression defined in Section 9 in the following manner:

> "9. "Holder in due course".—"Holder in due course" means any person who for consideration became the possessor of a promissory note, bill of exchange or cheque if payable to bearer, or the payee or indorsee thereof, if [7][payable to order,] before the amount mentioned in it became payable, and without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title."

As per Section 9, a 'holder in due course' is a person who for consideration has become a possessor of the instrument if payable to a bearer or if payable to the order to the person mentioned, i.e. the payee, or becomes the indorsee thereof. Holder in due course means the original holder or a transferee in good faith, who has acquired possession of the negotiable instrument for consideration,

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decisions, including *Subba Narayana Vathiyar and Others* v. *Ramaswami Aiyyar* (1907) 30 Mad. 88 (F.B.), *Bacha Prasad* v. *Janki Rai and Others*, AIR 1957 Pat. 380 and *Bhagirath* v. *Gulab Kanwar*, AIR 1956 Raj. 174.We express no opinion in the regard.

[7] Subs. by Act 8 of 1919. s. 2, for "payable to, or to the order of, a payee,"

without having sufficient cause to believe that there was any defect in the title of the person from whom he has derived the title. Negotiation in case of transfer should be before the amount mentioned in the negotiable instrument becomes payable. Clause (g) to Section 118[8] states that unless contrary is proved the 'holder' of a negotiable instrument is presumed to be a 'holder in due course'. But the proviso qualifies the presumption, where the instrument has been obtained from its lawful owner or a person in lawful custody thereof by means of an offence or fraud or has been obtained from the maker or acceptor thereof by means of an offence or fraud or by an unlawful consideration. In such cases the burden of proving that the 'holder' is a 'holder in due course' lies on the person claiming to be so.

17. This brings us to Section 10 of the NI Act, which defines the expression 'payment in due course' and reads as follows:

> ""Payment in due course" means payment in accordance with the apparent tenor of the instrument in good faith and without negligence to any person in

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[8] "118. Presumptions as to negotiable instruments. — Until the contrary is proved, the following presumptions shall be made:—

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"(g) that holder is a holder in due course:— that the holder of a negotiable instrument is a holder in due course:
provided that, where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud, or for unlawful consideration, the burden of proving that the holder is a holder in due course lies upon him."

> possession thereof under circumstances which do not afford a reasonable ground for believing that he is not entitled to receive payment of the amount therein mentioned."

When payment is made in accordance with the apparent tenor of the instrument in good faith and without negligence to a person in possession thereof, it is payment in due course. The requirement in Section 10 that the payment should be in both good faith and without negligence is cumulative. Thus, mere good faith is not sufficient. Consequently, Section 3(22) of the General Clauses Act, 1897, which defines 'good faith' as an act done honestly, whether done negligently or not, is not sufficient to hold that the payment made was 'payment in due course' under the NI Act. Ascertainment of whether the act of payment is in good faith and without negligence is by examination of the circumstances in which payment is made. In other words, antecedent and present circumstances should not afford a reasonable ground for believing that the person to whom payment is made is not entitled to receive payment of the amount mentioned.[9] While it would not be advisable or feasible to strait-jacket the circumstances, *albeit* value of the instrument, other facts that would raise doubts about the reliability and identity of the person entitled to receive payment and

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[9] *Bank of Maharashtra v. M/s. Automotive Engineering Co.,* (1993) 2 SCC 97

genuineness of the instrument in the payer's mind are relevant considerations.

18. Elucidation on the aspect of care required to be exercised by the bankers to seek statutory protection under Section 131[10] of the NI Act is to be found in ***Indian Overseas Bank*** v. ***Industrial Chain Concern***,[11] wherein extensive reference has been made to the earlier case laws, Halsbury's Laws of England and English decisions. When deciding whether the bank is negligent it is necessary to see whether the rules or instructions of the bank are followed or not, though this may not always be conclusive. Till an account is opened, banker and customer relationship is not created, but once the account is opened contractual relationship is created. Moreover, mutual rights and obligations between the banker and customer are also created under law. In case of fraudulent encashment of cheques, the collection and payment embraces the

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[10] **131. Non-liability of banker receiving payment of cheque.—** A banker who has in good faith and without negligence received payment for a customer of a cheque crossed generally or specially to himself shall not, in case the title to the cheque proves defective, incur any liability to the true owner of the cheque by reason only of having received such payment.

Explanation I.— A banker receives payment of a crossed cheque for a customer within the meaning of this section notwithstanding that he credits his customer's account with the amount of the cheque before receiving payment thereof.

Explanation II.—It shall be the duty of the banker who receives payment based on an electronic image of a truncated cheque held with him, to verify the prima facie genuineness of the cheque to be truncated and any fraud, forgery or tampering apparent on the face of the instrument that can be verified with due diligence and ordinary care.

[11] (1990) 1 SCC 484

bank's duty to the real owner, if the customer happens not to be the real owner. In such cases, the bank's liability is protected on the satisfaction of the conditions mentioned under Section 131 of the NI Act and not otherwise. This is so because the drawer of the cheque is not the customer of the bank while the payee is. Consequently, if there is anything to arouse suspicion regarding the cheque and the ownership of the customer, the bank may find itself beyond the protection of Section 131 of the NI Act. Suspicion may arise when the amount is very large, credibility and identity of the customer is pied etc. Further, negligence may be established when collection and payment is made contrary to the tenor of the instrument. Carelessness occurs when there is failure to pay due attention to the actual terms of the mandate. At the same time we must be realistic and pragmatic not to narrow down banker's protection under Section 131 of the NI Act to make the banker's position vulnerable. This would be disadvantageous to the expansion of banking business. Banking has penetrated and is widespread and, therefore, precautions at one time may not be a proper guide. Corresponding standard of reasonable care and not stricter liability is conducive and the correct test. The officers of the banks are not required to be amateur detectives, *albeit* they can be attributed the degree of intelligence ordinarily required from a

person in their position. Therefore, microscopic examination of the cheque paid in collection may not ordinarily be necessary, but this may be required when facts are sufficient to raise reasonable ground to suspect that there may be a wrongdoing.

19. Explanation II to Section 131 of the NI Act inserted with effect from 6th February 2003 states that it is the duty of every banker who receives payment based on an electronic image of a truncated cheque to verify the *prima facie* genuineness of the cheque, and exercise due diligence and ordinary care to verify fraud, forgery or tampering apparent on the face of the instrument. Therefore, the bank can escape only when the banker acts in good faith and without negligence. The latter is the *sine qua non* for a banker to get absolved under Section 131 of the NI Act. Hence, to claim statutory protection the bank will have to meet the statutory conditions, and the courts will not accept any attempt to override and get over the obligation.

20. The judgment in ***Kerala State Co-operative Marketing Federation*** v. ***State Bank of India and Others***,[12] with reference to Sections 131 and 131A of the NI Act, which incorporate a general rule protecting the collecting banker against the true owner in the

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[12] (2004) 2 SCC 425

event the customer from whom the collecting bank collects the draft or cheque has no title or defective title, observes that the conditions for good faith and without negligence must be strictly complied with, and the onus of proving that the banker had acted in good faith and without negligence is on the collecting bank. The standard of care to be exercised by the collecting banker to escape the charge of negligence depends upon the general practice of the bankers, which may change from time to time, further with the enormous spread of banking activities and cases decided a few decades ago may not probably offer unfailing guidance in determining the question of negligence at a later point of time. The standard of care expected from a collecting banker does not require him to subject the cheque to a minute and microscopic examination, yet disregarding circumstances about the cheque, which on the face of it gives rise to suspicion, may amount to negligence on the part of the collecting banker. Further, the question of good faith and negligence is to be judged from the standpoint of the true owner towards whom the banker owes no contractual liability but statutory duty by these provisions. It is a price that the banker pays for seeking protection under the statute from otherwise more extensive liability the bank would be exposed to under the common law. Another significant observation is that the allegation of contributory

negligence against the paying banker could provide no defence for the collecting banker who has not collected the amount in good faith and without negligence. The aforesaid observations regarding Sections 131 and 131A of the NI Act would be applied by us appropriately to the facts of the present case in terms of the mandate of Section 10 of the NI Act. We would, however, clarify that we have not pronounced on the applicability of Section 131 to the KVPs as encashed.

21. This Court in ***U. Ponnappa Moothan Sons, Palghat*** v. ***Catholic Syrian Bank Limited and Others***,[13] has elaborately considered and elucidated on Sections 9, 10 and clause (g) of Section 118 of the NI Act. English Law states that the holder in taking the instrument should act in good faith. When he has no knowledge of the defect in the title and acts honestly, whether he is negligent or not, he is deemed to have acted in good faith. Indian law is stricter than the English law and requires the person to exercise due diligence, which means no person should take a security of this kind from another without using reasonable caution. Delving on the words "sufficient cause to believe"[14] where lack of good faith and negligence is alleged, reference is made to Bhashyam and Adiga

[13] (1991) 1 SCC 113

[14] The expression "sufficient cause to believe" has been used in Section 9 of the NI Act.

on the Negotiable Instruments Act (15th Edition at page 171), which quotes a passage from Chalmer's book *'The law relating to Negotiable Instruments in British India'* (4th Edition) and the legal position explained by Chitty. The relevant passages and the conclusion drawn by the Court in ***U. Ponnappa Moothan Sons, Palghat*** (supra) are as under:

> "13. However, with regard to the legal importance of negligence in appreciating the principle of "sufficient cause to believe" a passage from Chalmers' book "The Law Relating to Negotiable Instruments in British India" (4th Edn.) may usefully be noted:
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> > "All the circumstances of the transactions whereby the holder became possessed of the instrument have a bearing on the question whether he had "sufficient cause to believe" that any defect existed.
> >
> > It is left to the Court to decide, in any case where the holder has been negligent in taking the instrument without close enquiry as to the title of his transferor, whether such negligence is so extraordinary as to lead to the presumption that the holder had cause to believe that such title was defective."
> >
> > (Emphasis supplied)
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> This view is more sound and logical. The legal position as explained by Chitty may be noted in this context which reads as under:
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> > "While the doctrine of constructive notice does not apply in the law of negotiable instruments the holder is not entitled to disregard a "red flag" which has raised his suspicions."
>
> We, therefore, modify the view taken by the Allahabad High Court in Durga Shah case to the extent that though the failure to prove bona fide or absence of negligence would not negative the claim of the holder to be a holder

in due course, yet in the circumstances of a given case, if there is patent gross negligence on his part which by itself indicates lack of due diligence, it can negative his claim, for he cannot negligently disregard a “red flag” which arouses suspicion regarding the title. In this view of the matter we hold that the decision in Raghavji case does not lay down correct law. We agree with the view taken by the Allahabad High Court with above modification.

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17. From the above discussion it emerges that the Indian definition imposes a more stringent condition on the holder in due course than the English definition and as the learned authors have noted the definition is based on Gill case. Under the Indian law, a holder, to be a holder in due course, must not only have acquired the bill, note or cheque for valid consideration but should have acquired the cheque without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title. This condition requires that he should act in good faith and with reasonable caution. However, mere failure to prove bona fide or absence of negligence on his part would not negative his claim. But in a given case it is left to the Court to decide whether the negligence on the part of the holder is so gross and extraordinary as to presume that he had sufficient cause to believe that such title was defective. However, when the presumption in his favour as provided under S.118(g) gets rebutted under the circumstances mentioned therein then the burden of proving that he is a ‘holder in due course’ lies upon him. In a given case, the Court, while examining these requirements including valid consideration must also go into the question whether there was a contract express or implied for crediting the proceeds to the account of the bearer before receiving the same. The enquiry regarding the satisfaction of this requirement invariably depends upon the facts and circumstances in each case. The words “without having sufficient cause to believe” have to be understood in this background.”

The Court also affirmed that the enquiry regarding satisfaction of the requirements invariably depends upon the facts and circumstances of each case.

22. In our opinion, the presumption under clause (g) to Section 118 would not apply as Rukhsana is not an indorsee and the instrument was in the name of the appellants. Further, Rukhsana is not a 'holder in due course', for she had, and the respondents accept, obtained possession of the instrument from the lawful owners, i.e. the appellants, by means of an offence or fraud. It is an admitted case of the parties that Rukhsana was convicted and sentenced for the fraud committed. However, Section 78 uses the expression 'holder' and not 'holder in due course'. Rukhsana was not the 'holder' as defined under Section 8 of the NI Act. She was not entitled to sue the maker, acceptor or indorser of the instrument of the amount due thereon in her name. Further as elucidated below are primarily predicating our decision on the application of clause (c) to Section 82 read with Section 10 of the NI Act as the KYPs were bearer instruments. The respondent can claim discharge under Section 82(c) of the NI Act by showing that they had complied with the requirements of Section 10, that is, they had acted in good faith and without negligence.

23. 1988 Rules have been issued in terms of the power conferred on the Central Government under Section 12 of the Government Savings Certificate Act, 1959 (for short, the "GSC Act"). The section states that the Central Government can make rules to carry out the purposes of the GSC Act and in particular the rules can be framed for issue and discharge of such certificates, and transfer and conversion of saving certificates and fees to be levied in respect thereof. The 'holder' as defined in clause (a) in Section 2 in the GSC Act means an individual who holds the savings certificate in accordance with the provisions of this Act and any rules made thereunder. Clause (d) to Section 2 defines 'transfer' as a transfer *inter vivos* and does not include a transfer by operation of law.

24. Section 4 of the GSC Act deals with holding of the savings certificates by or on behalf of the minors; Section 5 deals with payment where savings certificate is held by or on behalf of the minor; Section 6 deals with nomination by holders of the savings certificates; and Section 7 deals with payment of the savings certificates on death of a holder. Sections 4 and 6 of the GSC Act are *non-obstante* provisions that prevail notwithstanding anything contained in any law for the time being in force.

25. However, what is important for us are Sections 8 and 11 of the GSC Act which read:

> "**8. Payment to be a full discharge.**— (1) Any payment made in accordance with the foregoing provisions of this Act to a minor or to his parent or guardian or to a nominee or to any other person shall be a full discharge from all further liability in respect of the sum so paid.
>
> (2) Nothing in sub-section (1) shall be deemed to preclude any executor or administrator or other representative of a deceased holder of a savings certificate from recovering from the person receiving the same under section 7 the amount remaining in his hands after deducting the amount of all debts or other demands lawfully paid or discharged by him in due course of administration.
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> (3) Any creditor or claimant against the estate of a holder of a savings certificate may recover his debt or claim out of the sum paid under this Act to any person and remaining in his hands unadministered, in the same manner and to the same extent as if the latter had obtained letters of administration to the estate of the deceased.
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> xx xx xx
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> **11. Protection of action taken in good faith.**— No suit or other legal proceeding shall lie against any officer of the Government or any prescribed authority in respect of anything which is in good faith done or intended to be done under this Act."

In our opinion, Sections 8 and 11 of the GSC Act have no application in the present case. Section 8 states that payment would be in full discharge when payment is made in accordance with the foregoing provisions of the GSC Act, that is, payment, where the certificate is held by or on behalf of the minor, in terms of

Section 5 and payment on the death of a holder in terms of Section 7. The expressions ‘minor’, ‘his parent’ or ‘guardian’ in Section 8 of the GSC Act are persons referred to in Section 5 of the GSC Act and the word ‘nominee’ and ‘any other person’ are persons referred to in Section 7 of the GSC Act. The expression ‘any other person’ in our opinion would refer to the persons covered by sub-section (5) to Section 7 of the GSC Act, which reads as under:

> “**7. Payment on death of holder.**–
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> xx xx xx
>
> (5) Nothing contained in this section shall be deemed to require any person to receive payment of the sum due on a savings certificate before it has reached maturity or otherwise than in accordance with the terms of the savings certificate.”

26. Thus, sub-section (1) to Section 8 would come to the aid of the respondents only when the payment is made where the savings certificate is held by or on behalf of the minor and to the nominee or to a person mentioned in sub-section (5) of Section 7 on death of the holder. It is not a provision of general or universal application and does not discharge the respondents of their liability when Sections 5 and 7 of the GSC Act do not apply. Section 8(1) does not protect payments not covered and governed by Sections 5 and 7 of GSC Act. Sections 5 and 7 do not apply to the present case.

27. Similarly, Section 11 protects any officer of the Government or any prescribed authority in respect of anything done or intended to be done under the GSC Act. The subject matter of the present proceedings does not relate to anything which is done or intended to be done by the respondents under the GSC Act. No such plea or defence has been pleaded and raised by the respondents. Interestingly, Section 3[15] of the GSC Act states that notwithstanding anything contained in any other law for the time being in force, no transfer of the savings certificate shall be valid unless it is made with previous consent in writing of the 'prescribed' authority. The word 'prescribed' defined in Section 2(b)[16] means prescribed by the rules under the GSC Act.

28. Before we advert to the aspect of standard of care required to be exercised by the post office under the 1988 Rules while encashing KVPs or other instruments, we would like to briefly consider whether the KVPs in question were bearer instruments or payable to order. It appears to be the stand of the respondents, though not specifically stated and argued, that the KVPs were bearer instruments and hence encashable by the bearer of the instrument.

[15] **3. Restrictions on transfer of savings certificate.**–Notwithstanding anything contained in any law for the time being in force, no transfer of a savings certificate, whether made before or after the commencement of this Act, shall be valid unless it has been made with the previous consent in writing of the prescribed authority.

[16] 2(b) "prescribed" means prescribed by rules made under this Act;

This stand of the respondents, in our opinion, is partially correct as KVPs are encashable in terms of the 1988 Rules. KVPs are bearer instruments with conditions to be satisfied before payment is made to the 'physical holder' and presenter of the instrument for encashment, an aspect we would elaborate. The respondents are not under an obligation to honour KVPs unless the conditions specified are satisfied. However, once we accept the position that KVPs are bearer instruments, the maker, i.e. the respondents, would be discharged when they make payment in terms of clause (c) to Section 82 of the NI Act, that is, 'payment made in due course' as defined by Section 10 of the Act. For clarity, we would also state that if the KVPs are held to be payable to order, then the maker, that is, the respondents, would be discharged from liability in terms of Section 78 of the NI Act when they make payment to the 'holder', which as per Section 8 of the Act means a person who is entitled to possession of the instrument and is also entitled to sue to recover the amount from the maker of the instrument. The respondents as the maker of KVPs have not discharged the liability in terms of Section 78 as payment to Rukhsana was not made to the 'holder' of the KVPs. To repeat, Rukhsana was not entitled to sue the maker, acceptor or indorser of the instrument for the recovery of the

amount due thereon in her name. The KVPs were not indorsed in favour of Rukhsana.

29. To decide whether the KVPs were simple bearer instruments or a bearer instrument with conditions, it is essential to glean the relevant 1988 Rules. These Rules are also relevant when we examine the question of good faith and negligence. Rule 11 of the 1988 Rules, which relates to the place of encashment, postulates as under:

> "**11. Place of encashment:**- A certificate shall be encashable at the Post Office of its issue: - Provided that a certificate may be encashed at any other Post Office if the officer-in-charge of that Post Office is satisfied on production of identity slip or on verification from the Post Office of issue that the person presenting the certificate for encashment is entitled thereto."

Rule 11 refers to the identity slip which is issued in terms of Rule 9 and reads:

> "**9. Identity slip**:- (1) if a request for the issue of an identity slip is made at any time by holder or holders of a certificate, an identity slip shall be issued to such holder or holders on his or their signing the identity slip.
>
> (2) The identity slip shall be surrendered at the time of the final discharge of the certificate or in case of its loss, a declaration of such loss shall be furnished to the Post Office."

Therefore, in terms of Rule 9, an identity slip is to be issued to the holder or the holders of the certificate when they request to the said effect when and after the KVPs are issued. The holder/holders

have to sign the identity slip. Sub-rule (2) to Rule 9 states that the identity slip shall be surrendered at the time of final discharge of the certificate, or in case of loss, a declaration of the said loss shall be furnished to the post office. Rule 11 states that a certificate shall be encashable at the post office which issued it. However, a KVP can also be encashed at any other post office if the Officer-in-charge of that post office is satisfied, on production of the identity slip or on verification from the post office of issue, that the person presenting the certificate for encashment is entitled to encashment. Thus, it cannot be said that the KVPs are simple bearer instruments payable to anyone who presents the same for encashment and discharge.

30. Rule 13 deals with premature encashment and prescribes in the table the amount payable, *albeit* we need not reproduce the said rule, for even in such cases, Rule 11 read with Rule 9 will apply. Significantly, the respondents have issued Post Office Bank Manual (Volume II), which *vide* clauses 23(1) and 23(2) mandate as under:

> "ENCASHMENT OF CERTIFICATE
>
> 23(1) A certificate may be presented for encashment at any Post Office in India doing S.B. work. If it neither stands registered at the office nor is it accompanied by an Identity slip, the holder will be requested to make an application expressing his desire to encash the certificate at that office giving therein the name of the Post Office at

which it stands registered, the full particulars of the certificate, viz., the serial number with the prefixed letters, date of issue and the registration number and the full name and address as given in the application for purchase. Below his signature should be given his present address. The particulars of the certificate shall be verified by the Postmaster from the original certificate which shall be returned to the holder for presentation after about a week. The application thus obtained shall be date-stamped and sent to the office of registration for verification and return within 3 days. The office at which payment is desired by the holder should remind the office of registration if no reply is received within a week. In the meantime enquiries may be made at the local address about the identity of the applicant. On receipt back of the application from the office of registration, the holder will be informed of the fact and requested to present the certificate for encashment. For revised procedure in such cases see rule 31. The certificate to be encashed should be examined to see:

(a) whether the period of non-encashability has expired. In the following circumstances, however, a certificate may be encashed before the expiry of the period of non-encashability :-

(i) On the death of the holder or both of the holders in case of joint holders;

(ii) On forfeiture by a pledgee being gazetted, Government Officer;

(iii) When the holding is in excess of the prescribed limits;

(iv) When the certificate has been issued in contravention of the Rules;

(v) When ordered by a Court of law; and

(vi) On the death of one of the joint holders in case of KVP and N.S.C. (VIII-Issue)

(b) That the name of the holder, the number of the certificate and date of its issue appearing in the application or the identity slip, corresponds with the entries on the certificate;

(c) That the certificate is not the one which has been reported as lost or stolen before issue from Post Offices in the Postmaster General's Circulars;

(d) That the certificate has not been attached by a Court of law;

(e) That the identity slip if issued to the holder is surrendered, and it is in prescribed form. In case the identity slip is one on which the specimen signature of the holder is pasted, it should be carefully scrutinized to see that the specimen signature is not a substituted one and the stamp impression on it is intact;

(f) That the certificate is not the one in lieu of which a duplicate has been issued;

(g) If full maturity value is claimed, the correctness of the date of maturity should be verified with reference to the Date Stamp and the date of issue noted on the certificate and the application or the identity slip; and

(h) That the certificate has not been reported at any time by the holder as having been lost, stolen or destroyed. In such cases procedure laid down in Note 2 below Sub-Rule(2) of Rule 43 will be followed.

Note: Procedure for encashment of saving certificates accompanied by Identity Slips in office other than the office of registration :-

In case the holder presents Identity Slip, prior verification from the office of registration is not necessary. A reference may be made to the office of registration/issue to reconfirm the identity of the holder/genuineness of the Identity Slips. No undue harassment of delay should be caused to a bonafide investor/holder. If National Savings Certificates are presented for encashment with Identity Slip at an office other than office of registration after one year from the date of maturity of the certificate, a reference may be made to the office of registration for prior verification, if Postmaster considers it necessary.

(2) If the counter Assistant is satisfied on all the above points, he will calculate the amount payable and then ask

the holder to sign the endorsement on the certificate "Received payment of Rs............." in words and figures in his presence. If the certificate is presented for encashment through a messenger, the endorsement should have been signed already and the certificate accompanied by a letter of authority containing the specimen signature of the messenger. It should be seen whether the signature below the endorsement and the letter of authority if any, agrees with that on the application or the identity slip. The certificate will then be placed before the Postmaster who will satisfy himself about the authenticity of the certificate and the title of the holder. He will also ensure that the examination of the certificate has been carried out in the manner prescribed and that the amount payable as noted on the certificate is correct. He will then pass order 'Pay' under his signature at a suitable place above the place for the holder's signature to authorize payment. Payment will then be made by the counter Assistant. When payment is made to a messenger, his signature or thumb impression must be taken in addition to the signature of the holder, below the holder's endorsement, "Received payment of Rs................". In case the signature of the holder below the endorsement does not agree with that on record, payment will be made only after the holder has been identified and his signature has been attested by the identifier (other than the agent or messenger of the holder) who is known to the post office or by anyone of the following indicated at items (i) to (v) below with whose signature and seal of office the post office is familiar or on production of any proof mentioned in item (vi) below:

(i) District organizers of the National Savings Organization;

(ii) Justice of Peace, Magistrates (including honorary Magistrates) and Judges;

(iii) Members of Parliament or a Legislative Assembly/Council, Presidents of Municipalities Local Bodies and Sarpanches of Panchayats;

(iv) Principals of colleges and Head of high schools recommended by the Education Secretary or Directors of Public Institutions;

(v) A Government officer under his seal of office; and

> (vi) A Postal identity card, a passport or any other identity card containing holder's photograph issued by a proper authority. The particulars of such a proof having been produced should be recorded on the certificate under the signature of the supervising officer.
>
> The attestation should be in the following terms:
>
> "The applicant is known to me and has signed/his thumb impression has been taken in my presence".
>
> The date of discharge and payment of interest of each certificate will be entered against the entry relating to the certificate on the reverse of the application under the dated initials of the Postmaster."

31. Letter No. 95-8/98-SB dated 18.08.1999 issued by the Director General, Postal Services, states that any payment exceeding Rs.20,000/- is to be made by cheque. It reads:-

> "The D.G posts has instructed that the discharge value of Kisan Vikas Patras exceeding Rs. 20,000 should be paid by cheque rather than by cash by the post offices in future."

The impugned judgment, however, refers to the "Post Office Small Savings Scheme" (Part one) written by Mr. A.N Dureja, Assistant Director General (Retd.), P&T Accounts and Finance Services, *vide* Rule 19, which reads:

> "19. Payment of discharge value of Kisan Vikas Patras by cheque:- The discharge value of Kisan Vikas Patras if it is Rs.20,000/- or more should be paid by cheque only by the post offices as provided in Section 269-T of the Income Tax Act. [D.G Posts letter No. 5-20/UP-06/2000-INV dated 28/29.8.2001]"."

Relying on this circular, the NCDRC held that the aforesaid stipulation had come into force with effect from 28/08/2001-29/08/2001. Impugned judgment does not refer to the letter No. 95-8/98-SP dated 18.08.1999 quoted above. To ascertain the correct position, we had asked the learned counsel appearing for the respondents to state whether the mandate issued *vide* letter No. 95-8/98-SB dated 18.08.1999 that the payment for the discharge value of KVPs, if such value is Rs. 20,000/- or more, should be by cheque rather than by cash is correct. The learned counsel for the respondents took time but has not reverted, which we treat as an acknowledgement that the stand taken by the appellants is correct.

32. At this stage, it would be relevant to refer to Rules 14 and 15 of the 1988 Rules, which read as under:

> "**14. Discharge of certificate.–**
>
> (1) The person entitled to receive the amount due under a certificate shall, on its encashment, sign on back thereof in token of having received the payment.
>
> (2) In the case of a certificate purchased on behalf of a minor who has since attained majority, the certificate shall be signed by such a person himself; but his signature shall be attested either by the person who purchased it on his behalf or by any other person who is known to the Postmaster.
>
> **15. Responsibility of Post Office.–**
>
> The Post Office shall not be responsible for any loss caused to a holder by any person obtaining possession of a certificate and fraudulently encashing it."

While examining the said Rules, we shall also deal with the allegation of contributory negligence on the part of the appellants. Rule 14(1) states that the person entitled to receive the amount due, on the encashment of the certificate, shall sign on the back thereof in token of having received the payment. It prescribes a procedure for discharge of the instrument and the requirement of signature on the back of the certificate by the person receiving the amount in token of having received the payment. It is not the case of the respondents that the appellants had received the payment. Rule 14(1), to our mind, has nothing to do with the question of good faith and negligence on the part of the banker, that is, the Post Office. Rule 14(1) would not absolve the Post Office from the statutory obligation and consequent liability in terms of clause (c) to Section 82 read with Section 10 of the NI Act. Rule 15 states that the Post Office shall not be responsible for any loss caused to the holder if any other person obtains possession of the certificate and fraudulently encashes the same. Rule 15 does not absolve the respondents in case of negligence or absence of good faith. It applies when the post office otherwise acts in accordance with law in good faith and without negligence. Rule 15 would not protect

when an officer of the post office is involved or a perpetrator of the fraud.

33. When we turn to the facts of the present case and examine the question of negligence (and also lack of good faith as indicated) on the part of the respondents, the following factual matrix is established:

(i) The KVPs were in the name of the appellants.

(ii) The KVPs had not been endorsed in the name of Rukhsana, though the appellants had signed the same at the place mentioned for discharge and payment of the KVPs.

(iii) The KVPs were not presented for encashment at the post office of its issue. In terms of Rule 11, the KVPs could have been encashed at a post office other than the post office which issued them, only when the Officer-in-charge of the post office is satisfied, on the production of the identity slip or on verification from the post office of issue, that the person presenting the KVPs for encashment is entitled thereto.

(iv) The KVPs, when presented, were without the identity slip of the appellants. As per the mandate of Rule 9, identity slip had to be surrendered at the time of discharge of the certificate or in case of loss, a declaration of such loss had to be furnished to the post office. No declaration was furnished.

(v) There is nothing on record to suggest that the Officer-in-charge of the post office was satisfied on the production of the identity slip or on verification from the post office of issue that the person presenting the certificate for encashment, namely Rukhsana, is entitled thereto. Thus, there was violation of Rules 9 and 11 of the 1988 Rules. It also follows that Rukhsana was not the 'holder'.

(vi) There is also violation of Clauses 23(1) and 23(2) of the Post Office Bank Manual (Volume 2), which have been quoted above. Clause 23(1) states that when a KVP is presented for encashment at any post office in India doing savings bank work, but such KVP is not registered in that post office and not accompanied by an identity slip, the holder will be required to make an application expressing his desire to encash the KVP at such other post office and in the application state the name of the post office where the KVP stands registered, full particulars of the certificate, that is, the serial number, date of issue and the registration number. In addition, he is also required to give his full name and address as given in the application for purchase. The application should also state, below the presenter's signature, his present address. In the present case, no written application

was made by the appellants and filed along with the certificates presented for encashment by Rukhsana. Rukhsana, as noticed above, is not the 'holder' of the instrument which was issued in the name of the appellants who were entitled to payment.

(vii) Clause 23(1) prescribes a detailed procedure for verification by the post master when a KVP, not accompanied by identity slip, is presented for encashment at the post office other than the registered post office. It mandates that the presenter shall make an application which shall be date stamped. After one week, the post master would return the original certificate to the holder for presentation. The verification exercise includes ascertaining the authenticity of the signature on the application with the signature of the person in whose name the certificate was issued. In case of a mismatch, a detailed procedure for authentication of signature is prescribed.

(viii) The KVPs were in the name of the appellants. Rukhsana was an agent appointed by the State of Uttar Pradesh for facilitating the customers/holders of the savings instruments. Payment of huge amount of Rs. 25,54,000/- to Rukhsana in cash by itself *per se* is an act of negligence. It indicates lack of *bona fides* and consequently absence of good faith.

Further, this is a case of fraud by an officer of the post office. The payment in cash was contrary and in violation of letter No.95-8/98-SB dated 18.08.1989, which mandates that payments exceeding Rs.20,000/- should be paid by cheque and not in cash.

34. We would now examine the issue and question of contributory negligence. Legal position on contributory negligence has been stated in ***Kerala State Co-operative Marketing Association*** (supra). Exhaustive discussion on the said aspect is to be found in ***Canara Bank*** v. ***Canara Sales Corporation and Others,***[17] which was a case where forged cheques were encashed and the customer had raised a claim amongst others against its banker. The bank had raised the plea of negligence of the customer. On the aspect of civil obligation of a customer in terms of banking contract and in tort law, this decision approves the following observations made by the Privy Council in ***Tai Hing Cotton Mill Ltd.*** v. ***Liu Chong Hing Bank Ltd. and Others***:[18]

> "37. Then the Privy Council proceeded to consider the weightier submissions advanced by the bank (1) a wider duty on the part of the customer to act with diligence which must be implied into the contract and alternatively that such a duty arises in tort from the relationship between banker and customer. The Privy Council parted company with the observation by the Court of Appeal

[17] (1987) 2 SCC 666

[18] (1985) 2 All ER 947

here and repelled the plea that it was necessary to imply into a contract between a banker and the customer a wider duty and that it was not a necessary incident of banker/customer relationship that the customer should owe his banker a wider duty of care. This duty is in the form of an undertaking by the customer to exercise reasonable care in executing his written orders so as not to mislead the bank or to facilitate forgery. The Privy Council accepted that an obligation should be read into the contract as the nature of this contract implicitly requires. In other words "the term sought to be implied must be one without which the whole transaction would become futile and inefficacious". After referring to some earlier decisions, the Privy Council rejected the implied term submission and set out the limits of the care of the customer and the functions of the banks in the following words: (All ER p. 956)

> "One can fully understand the comment of Cons JA that the banks must today look for protection. So be it. They can increase the severity of their terms of business, and they can use their influence, as they have in the past, to seek to persuade the legislature that they should be granted by statute further protection. But it does not follow that because they may need protection as their business expands the necessary incidents of their relationship with their customer must also change. The business of banking is the business not of the customer but of the bank. They offer a service, which is to honour their customer's cheques when drawn on an account in credit or within an agreed overdraft limit. If they pay out on cheques which are not his, they are acting outside their mandate and cannot plead his authority in justification of their debit to his account. This is a risk of the service which it is their business to offer. The limits set to the risk in the *Macmillan* and *Greenwood* cases can be seen to be plainly necessary incidents of the relationship. Offered such a service, a customer must obviously take care in the way he draws his cheque, and must obviously warn his bank as soon as he knows that a forger is operating the account.""

Significantly the judgment states that the bank, when it makes payment of a forged cheque, it cannot resist the claim of the customer with the defence of negligence on the customer's part. The bank can succeed on the plea of negligence of the customer when it establishes adoption, estoppel or rectification on the customer's part. On the aspect when negligence constitutes estoppel, it was held:

> "29… For negligence to constitute an estoppel it is necessary to imply the existence of some duty which the party against whom estoppel is alleged owes to the other party. There is a duty of sorts on the part of the customer to inform the bank of the irregularities when he comes to know of it. But by mere negligence one cannot presume that there has been a breach of duty by the customer to the bank. The customer should not by his conduct facilitate payment of money on forged cheques. In the absence of such circumstances, mere negligence will not prevent a customer from successfully suing the bank for recovery of the amount."

On the question of acquiescence on part of the customer, ***Canara Bank*** (supra) holds:

> "30. A case of acquiescence also cannot be flourished against the plaintiff. In order to sustain a plea of acquiescence, it is necessary to prove that the party against whom the said plea is raised, had remained silent about the matter regarding which the plea of acquiescence is raised, even after knowing the truth of the matter. As indicated above, the plaintiff did not, during the relevant period, when these 42 cheques were encashed, know anything about the sinister design of the second defendant. If the bank had proved to the satisfaction of the court that the plaintiff had with full knowledge acknowledged the correctness of the accounts for the relevant period, a case of acquiescence against the plaintiff would be available to the bank. That is not the case here."

35. In addition to the aforesaid legal position, we find that the NCDRC had been rather harsh in holding that the appellants were silent and, therefore, guilty of negligence. The finding overlooks that no one would like to avail services of a stranger or an agent if the work, that is, transfer of KVP certificates, could be otherwise handled and done with ease. Further, no one would like to lose money to a stranger. Necessarily, we would accept that the appellants had remained in touch with Rukhsana but were given the impression that the exercise is complex and would take time. Further they had belief that the post office would take care of their interest, act in good faith and would not be negligent.

36. In the light of the aforesaid discussion, it can be concluded that the payment was made in violation of the statutory mandate of Section 10 of the NI Act and, therefore, there is no valid discharge under clause (c) to Section 82 of the NI Act. Further, as held above, Rukhsana not being a 'holder', payment to her is not a valid discharge under Section 78 read with Section 8 of the NI Act. The respondents would have avoided the liability and claimed valid discharge if they had accepted the KVPs with the identity slip[19] or if

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[19] In which case, Rukhsana would be a 'holder' under Section 8 of the NI Act and on the KVPs being indorsed in her favour, the respondents could not have denied payment to her under Section 78 of the NI Act.

they had made payment by cross cheque, in which case, they would have satisfied the condition that they had made payment in good faith and there was no negligence, a requirement of clause (c) to Section 82 read with Section 10 of the NI Act.

37. Now, we advert to the second issue as to whether the respondents would be liable for the wrongs and act of M.K. Singh, respondent No. 4, in connivance or at the behest of Rukhsana. We begin by noting that M.K. Singh is not a third person but an officer and an employee of the Post Office. Post Office, as an abstract entity, functions through its employees. Employees, as individuals, are capable of being dishonest and committing acts of fraud or wrongs themselves or in collusion with others.[20] Such acts of bank/post office employees, when done during their course of employment, are binding on the bank/post office at the instance of the person who is damnified by the fraud and wrongful acts of the officers of the bank/post office. Such acts of bank/post office employees being within their course of employment will give a right to the appellants to legally proceed for injury, as this is their only remedy against the post office. Thus, the post office, like a bank, can and is entitled to proceed against the officers for the loss caused due to the fraud etc., but this would not absolve them from their liability if the

[20] See Punjab National Bank v. Smt. Durga Devi and Others (1977) SCC Online Del 93

employee involved was acting in the course of his employment and duties.

38. This Court in ***State Bank of India (Successor to the Imperial Bank of India)*** v. ***Smt. Shyama Devi***[21] held that for the employer to be liable, it is not enough that the employment afforded the servant or agent an opportunity of committing the crime, but what is relevant is whether the crime, in the form of fraud etc., was perpetrated by the servant/employee during the course of his employment. Once this is established, the employer would be liable for the employee's wrongful act, even if they amount to a crime. Whether the fraud is committed during the course of employment would be a question of fact that needs to be determined in the facts and circumstances of the case.

39. In the context of the factual background of the present case, we have no doubt in our mind that the fraud was committed by M.K. Singh, respondent No. 4, in and during the course of his employment. This is clear from the findings recorded in the departmental proceedings, which are as follows:

> "I have gone through the records of the case, enquiry report and other related documents of the case and have come to conclusion that the charged official Shri M.K. Singh utterly failed to observe the Rule 23(1) of

[21] (1978) 3 SCC 399

PO S.B. Manual Volume-II, i.e., procedure for encashment of certificates purchased from other than the office of issue. The Enquiry Officer has also agreed in enquiry report that the procedure outlined in Rule-23(1) of PO SB Manual Vol-II was not followed. The Enquiry Officer has also agreed that the investor has not given any application NC-032 for transfer of KVPs as provided in Rule 37 (1) and Rule 37(5) of PO SB Manual Volume II and Rule 3(1) (ii) of CCS (Conduct) Rules 1964 as mentioned in Article-I of Memo of Charges.

The Enquiry Officer in his enquiry report has agreed that the investor is a literate person and thus the endorsement of investor at the time of payment of KVPs should have been obtained in the handwriting of investor as provided in Rule 23(2) of SB Manual Vol-II. Otherwise if it was encashed through messenger (NS Agent) / authority letter should be produced. The Enquiry Officer has also agreed that the endorsement on KVPs at the time of payment was made by Smt. Rukhsana NS Agent. As such it is clear that the payment was made on the basis of already signed endorsement for receipt of payment. The charged official did not observe the procedure outlined in Rule 23(2) of SB Man. Volume-II. Thus it was against the provisions of Rule 23(2) of SB Manual Volume-II and Rule-3(1)(ii) of CCS (Conduct) Rules 1964 as mentioned in article II of Memo of Charges.

The Enquiry Officer in his enquiry report has suspected whether the payment of KVP was made to the investor or not. Thus it was against the provision of Rules 3(1)(i) and 3(1)(iii) of CCS (Conduct) Rules 1974 as mentioned in article-II of Memo of charges."

40. On behalf of the respondents, it is urged that the aforesaid observations are limited and confined to only one KVP. In our opinion, this contention would not help the respondents since it is apparent to us that the respondents were faced with a difficult

position as they wanted to act against M.K. Singh, and at the same time also protect themselves against any liability and claims of the appellants. Faced with this dilemma, the respondents acted half-heartedly and took action in the proceedings initiated against M.K. Singh, while they wanted to protect their commercial interests and defend themselves against claims made by the appellants. The findings recorded in the inquiry report, which became the basis for the order of dismissal, which punishment was subsequently converted to compulsory retirement, would, in our opinion, equally apply to the encashment of all the KVPs. No valid distinction can be drawn between the case that became the subject matter of departmental enquiry and other cases of encashment of the KVPs. Hence, the post office/bank can be held liable for the fraud or wrongs committed by its employees. Accordingly, the respondents will be held liable for the acts of M.K. Singh during the course of his employment.

41. In view of the aforesaid findings, we allow these appeals and set aside the impugned order passed by the NCDRC dismissing the consumer case filed by the appellants. The order and directions against Rukhsana remain undisturbed. We would allow the consumer case by issuing the following directions:

(i) Respondent Nos. 1 to 4 would be jointly and severally liable to pay the maturity value of the KVPs as on the date the KVPs were presented to the post office for encashment, along with 7% simple interest per annum from the said date till the date of payment.

(ii) The appellants would be entitled to a compensation of Rs. 1,00,000/- and costs of Rs. 10,000/-.

(iii) The amounts as directed above would be paid within eight weeks from the date of pronouncement of this judgment. In case of failure to pay the compensation amount within the aforesaid time, the respondents would be additionally liable to pay simple interest @ 7% per annum on the compensation amount of Rs.1,00,000/- from the date of pronouncement of this judgment till the date of payment.

......................................J.
(L. NAGESWARA RAO)

......................................J.
(SANJIV KHANNA)

......................................J.
(B.R. GAVAI)

NEW DELHI;
FEBRUARY 07, 2022.