

PETITIONER:
STATE BANK OF INDIA

Vs.

RESPONDENT:
SHYAMA DEVI

DATE OF JUDGMENT 05/05/1978

BENCH:
SARKARIA, RANJIT SINGH
BENCH:
SARKARIA, RANJIT SINGH
UNTWALIA, N.L.
KAILASAM, P.S.

CITATION:
1978 AIR 1263 1978 SCR (3)1009
1978 SCC (3) 399

ACT:
Vicarious liability-- Legal principle which governs the vicarious liability of an employer for the loss caused to a customer through the misdemeanour or negligence of an employee.

HEADNOTE:
The respondent opened a Savings Bank Account being No. 90001 with the appellant's predecessor, the Imperial Bank of India at its Allahabad Branch, having been introduced to the Bank by one Kapil Deo Shukhla, an employee of the bank and a close neighbour of the respondent and a friend of her husband, Bhagwati Prasad. On a suspicion about the entries in the respondent's Pass Book made by the employees of the Bank, which had been confirming and ratifying them from time to time, the respondent sent a notice dated August 13, 1948 to the defendant bank. The appellant bank replied by its letter dated 14-8-1948 explaining the deposit of several items making up to Rs. 1932-2-0 and denied the alleged deposits of Rs. 105, Rs. 4000, Rs. 8000/- and Rs. 100/said. to have been deposited through Kapil Dev Shukla. On November, 30, 1948, the respondent filed a suit in forma pauperis for the recovery of Rs. 1,5,547-10 As. together with pendente lite and future interest from the appellant's predecessors. The Trial Court found, except for the items of Rs. 105 and Rs. 4000/- entered in the pass-book the respondent had deposited other amounts mentioned in it and that the bank was bound by those entries. Holding that the rules were strictly enforced by the bank and if the bank had accepted an amount larger than the sum of Rs. 5,000/- in contravention of its Rules, the respondent was not debarred from claiming such deposit, the Trial Court decreed the respondent's suit (in respect of two items) for Rs. 10,040-10 As. together with simple interest on this amount from January 1st 1946 to August 14, 1947 @ Rs. 1-8-0 per cent per annum and from August 15, 1947 to December, 1948 at Rs. 7% per annum. It was further ordered that the respondent would get simple interest on the decretal amount after deducting Rs. 1986-2-As. which have been paid during the pendency of the suit, at 6% per annum. Proportionate costs was also awarded to the respondent. Aggrieved by the said

orders, the bank appealed to the Allahabad High Court and the respondent filed cross-objections in respect of the amount of Rs. 4,000/- and Rs. 105/- disallowed by the Trial Court. The High Court, on reappraisal of the evidence dismissed the bank's appeal and allowed the respondent's cross objections decreeing the suit for Rs. 14145-10 annas together with simple interest thereon from January 1, 1946 to August 14, 1947 @ Rs. 1-8-0 % per annum and from August 15, 1947 to December 1, 1948 at 6% per annum. It was further directed that respondent could get pendente lite simple interest from the appellant on, the decretal amount at 6% per annum and as the amount of Rs. 1,986-2-0 had been paid to the respondent on September, 1950 it would be deducted from the total amount found due to the respondent and the decretal amount scaled down pro tanto.

Allowing the defendant's appeal by certificate and dismissing the plaintiff's claim with regard to Rs. 11,000/- (consisting of items of Rs. 4,000/- plus Rs. 7,000/-) and interest thereon, the Court

HELD : (1) The legal principle which governs the vicarious liability of an employer for the loss caused to a customer through the misdemeanour or negligence of an employee are :

(a) The employer is not liable for the act of the servant if the cause of the loss or damage arose without his actual fault or privity or without the fault or neglect of his agents or servants in the course of their employment; (b) the damage complained of must be shown to have been caused by any wrongful act of his servant or agent done within the scope or course of the servant or agent's employment even if the wrongful Act

1010

amounted to a crime; and (c) a master is liable for his servants fraud perpetrated in the course of master's business whether the fraud was for the master's benefit or not, if it was committed by the servant in the course of his employment. There is no difference in the liability of the master for wrongs whether for fraud or any other wrong committed by a servant in the course of his employment and it is a question of fact in each case whether it was committed in the course of the employment. [1015 G-H, 1016 A, 1017 A-C]

Leesh River Tea Co. Lid & Ors. v. British India Steam Navigation Co. Ltd., [1966] 3 All E.R. 593; Lloyd v. Grace Smith & Co., [1912] A.C. 636 and United Africa Co. Ltd. v, Saka Owoada, [1955] A.C. 130 referred to.

(2) In the instant case, the appellant bank was not liable to make good the loss of Rs. 7,000/- (part of Rs. 8,000/- entry) caused to the respondent by the act of K. D. Shukla, who was acting as an agent of the bank and not within the scope of his employment with the bank. Nor could the fact that false and fictitious entries to cover his fraud were made by Shukla in the pass-book of the respondent and in the ledger account of Bhagwati Prasad and Sons make the embezzlement committed by Shukla an act committed in the course of his employment with the Bank. [1022 E-G]

(b) The cheque for Rs. 7000/- drawn by Bhagwati Prasad was not handed over in the normal course of business in the defendant-bank for transfer to respondent's account in the regular manner. K. D. Shukla instead of depositing the cheque with the bank, as per the letter dated 7-10-1946 addressed to the bank manipulated to appropriate it himself. In such a situation, the act which caused the loss to the respondent could not be said to have been committed by Shukla in the course of his employment with the bank. At the most it could be said that the fact of his being an

employee of the bank and a friend of Bhagwati Prasad gave him an opportunity to commit the fraud. [1022 B, D-E] Leesh River Tea Co. Ltd. & Ors. v. British India Steam Navigation Co. Ltd., [1966] 3 All E.R. 593 followed.

(c) The onus was on the plaintiff to show that she paid the amount to an employee of the bank and was received by that employee in the course of employment. The false and fraudulent entry about the deposit of Rs. 4000/in the pass book could not shift the onus to the bank to prove the contrary. The alleged deposit of Rs. 4000/- by crossed cheque on 17-9-45 is not supported by the testimony of Bhagwati Prasad. There was no entry in the cash scroll and no receipt was produced in token of deposit. The entry is obviously false. [1019 C, H. 1020 A]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2476 of 1968.

From the Judgment and Decree order dated 3-3-6A of the Allahabad High Court of Judicature at Allahabad in First Appeal No. 343 of 1952.

Y. S. Chitale, J. S. Arora, Ashok Grover and G. K. B. Chowdry for the Appellant.

S. P. Bhargava and M. V. Goswami for the Respondent.

The Judgment of the Court was delivered by

SARKARIA, J.-This appeal on certificate is directed against a judgment and decree, dated March 3, 1964, of the High Court of Judicature at Allahabad. It arises out of these circumstances :

On September 17, 1945, the respondent opened a Savings Bank Account, being No. 9001, with the appellant's predecessor, the imperial Bank of India at its Allahabad Branch. She was introduced to the Bank by one Kapil Deo Shukla, who was an employee of the Bank, and admittedly a close neighbour of the respondent and a friend of her husband, Bhagwati Prasad. 1011

On November 30, 1948, the respondent made a petition in forma pauperis for the recovery of Rs. 15,547/10/- together with pendente lite and future interest from the Imperial Bank. This petition was later registered as a regular suit in 1950. The plaintiff's case, as pleaded, was as follows :

The plaintiff had, apart from 1,932/2/- admitted by the defendand-Bank, the under-noted amounts which were deposited by her :from time to time with the Bank :

Rs.105deposited on September 17, 1945
Rs.4000deposited on September 17, 1945
Rs.8000deposited on December 7, 1945
Rs.100deposited on June 20, 1946

Rs.12205

These amounts were entered in the respondent's Pass Book by the ,employees of the Bank which had been confirming and ratifying those entries from time to time.

Paragraph 3 of the plaint is material. It may be extracted

"There was a permanent clerk named Kapil Deo Shukla in the employ of the defendant Bank, who exercised much influence on other employees of the Bank and used to work at different counters. The Bank viewed his actions with approval and acted with negligence. The plaintiff as well as other

constituents regarded him as an employee :and a responsible person of the Bank and quite often used to hand over the money and letter of instructions to him, while this clerk used to obtain the signature of the officer on the Pass Book as usual. The plaintiff used to believe that the money had been deposited and she was satisfied on perusal ,of the Pass Book. She had never any occasion for sus-picion."

In August 1946, the plaintiff's husband felt some suspicion in the Bank's affairs. She thereupon sent a notice, dated August 13, 1948 to the defendant Bank. The Bank replied by letter, dated August 14, 1948, in which it accepted the deposit of Rs. 1,932/- and denied the deposit and payment of the four items detailed above. The defendant-Bank was responsible for the acts and omissions of its employees which they did during their service, and if Shukla or any other employee of the Bank had committed embezzlement and defrauded the plaintiff, the Bank was responsible for making good that loss.

The defendant-Bank in its written statement admitted that Kapil Deo Shukla was one of its employees and he used to work at the ,counter, but not at the Savings Bank counter, where the Savings account of the plaintiff was dealt with. Shukla was no longer in the service of the Bank. The Bank further pleaded that the amount of Rs. 12,205/- as detailed above, was never deposited with it, nor

1012
were the alleged deposits constituting this amount ever confirmed or ratified by it. The Bank further stated that only an aggregate amount of Rs. 1,932/- had been deposited by the respondent on the diverse dates, as indicated below :

Rs.50-	deposited on September 17, 1945
Rs.400-	deposited on January 31, 1946
Rs.432-	deposited on February 4, 1946
Rs.1000-	deposited on April 23, 1946
Rs.50-	deposited on July 23, 1946

The Bank further averred that the plaintiff was introduced to, the Bank by the said Kapil Deo Shukla who was her close neighbour and a fast friend of her husband, Bhagwati Prasad, and that if the plaintiff-respondent selected him as her agent or instrument for depositing money in the Bank and he had defrauded her, or if Kapil Deo Shukla acting in collusion with her husband, showed wrong amounts in her Pass Book, the Bank was not liable for any loss that might have accrued to her.

The parties went to trial on these bases

- (1) Did the plaintiff deposit with the defendant the various sums of money mentioned in Para 4 of the plaint ?
- (2) Are these amounts mentioned in the plaintiff's Pass Book ? If so, is the defendant bound by the entries therein ?
- (3) Did the plaintiff make any deposit in contravention of any rule of the Bank ? If so, to what effect ?

On Issues (1) and (2), the trial court found that, except for the items of Rs. 105/- and Rs. 4,000/- entered in the Pass Book, the respondent had deposited the other amounts mentioned in it and that the Bank was bound by those entries. On Issue No. (3), it was held that the Rules were not strictly enforced by the Bank, and if the Bank had accepted an amount larger than the sum of Rs. 5,000/in contravention of its Rules, the respondent was not debarred

from claiming such deposit.

In the result, the trial court, on July 8, 1952, decreed the respondent's suit (in respect of two items) for Rs. 10,040/40/-, together with simple interest on this amount from January 1 1946, to August 14, 1947 @ Rs. 1/8/- per cent per annum, and from, August 15, 1947 to December 1948 @ Rs. 71-1- per cent per annum. It was further ordered that the respondent would get simple interest: on the decretal amount (after deducting Rs. 1,986/2/- which had been paid during the pendency of the suit) @ 6% per annum. Proportionate costs were also awarded to the respondent.

1013

Aggrieved, the Batik carried an appeal to the High Court of Judicature at Allahabad, and the respondent filed cross-objections in respect of the amounts of Rs. 4,000/- and Rs. 1051/-, disallowed by the trial court.

The High Court observed that the disputed amount of Rs. 8,000/shown in the Pass Book consisted of two items, the bigger of which was an amount of Rs. 7,000/- in the form of a cheque drawn by Bhagwati Prasad on the account of Bhagwati Prasad & Sons in Bharat Bank Ltd., Allahabad, and that Bharat Bank paid the amount of the cheque to Dass Bank Ltd., Allahabad, who credited it to the account of Lala Babu alias Kapil Deo Shukla, the aforesaid employee of the Imperial Bank. On these premises, the High Court found that the amount of the cheque was not actually deposited, first, in the account of Bhagwati Prasad & Sons, nor later in the Savings Account of the respondent, and that Kapil Deo Shukla had fraudulently taken the money of the cheque and credited it in his own account in the Dass Bank Ltd., Allahabad. "Therefore, the respondent had to suffer because of the action of Kapil Deo Shukla, an employee of the Imperial Bank."

Repelling the contention of the appellant-Bank, the High Court held on the basis of the evidence of the appellant's witnesses Mahadeo Prasad and Narbada Prasad-that "it could not be said that Kapil Deo Shukla was not acting in the course of his employment in the Bank".

Regarding the entry of Rs. 100/- the High Court held that the initials against this entry purporting to be of L. Anthony, had not been proved to be forged inasmuch as L. Anthony had not been examined, and that if any fraud had been committed by Kapil Deo Shukla, the Bank was liable for the same.

In respect of the disputed deposit of Rs. 4,000/-, the High Court held that the appellant had not, disproved the statement of Bhagwati Prasad by having the accountant of the Calcutta National Bank summoned with the accounts relating to Bhagwati Prasad, and as' such, it did not see any reason to disbelieve Bhagwati Prasad's statement that the cheque for Rs. 4,000/- was given to the Bank on September 10, 1945 to open a Savings Bank account in the name of the respondent, and that if K. D. Shukla cashed that cheque, also and had the amount deposited in his own account, the respondent could not be made to suffer for the fraud committed by Kapil Deo Shukla in the course of his employment in the Bank.

With regard to the item of Rs. 105/- also, the High Court accepted Bhagwati Prasad's statement that amount ad been deposited by him on September 7, 1945.

The High Court dismissed the Bank's appeal and allowed the plaintiff-respondent's cross-objections, decreeing the suit 'for' Rs. 14,145/10/-, together with simple interest thereon from January 1, 1946 to August 14, 1947 at the rate of Rs. 1/8/- per cent Or annum

1014

and from August 15, 1947 to December 1, 1948 at 6 per cent per annum. It was further directed that the respondent could get pendente litse simple interest from the appellant on the decretal amount at 6% per annum. As the amount of Rs. 1,986/2 had been paid to the respondent on September 16, 1950, it would be deducted from the total amount found due to the respondent and the decretal amount scaled down pro tanto. Costs of both the courts were also awarded to the respondent.

Hence, this appeal by the Bank on a certificate granted by the High Court under Article 133 of the Constitution read with sections 109 and 110 of the Code of Civil Procedure.

Dr. Y. S. Chitale, appearing for the appellant, contends that the respondent's case, as laid in the plain,, was that the plaintiff had entrusted K. D. Shukla, who was their friend, with moneys from time to time for depositing in her Savings Bank account. In such a situation, K. D. Shukla could not be said to have been acting in due course of his employment or an agent of the Bank but only as an agent of the respondent, and if K. D. Shukla did not deposit those amounts. as directed by the plaintiff, but misappropriated the same and to cover up his fraud made false entries in the Pass Book, the Bank was not liable. Stress has been laid on the fact that the disputed amounts. were never delivered by cheque or otherwise at the Bank's counter. In this connection, reliance has been placed on the principles enunciated in Leesh River Tea Co., Ltd. & Ors. v. British India Steam Navigation Co., Lid.(1); Ruben and Ladenburg v. Great Fingall(2); and Morris v. C. W. Martin & Sons Ltd.(3)

As against the above, Mr. Bhargav submits that the entries in the Pass Book showing the deposit of these amounts in the Savings Bank account of the plaintiff, had admittedly been made by K. D. Shukla, when he was an employee of the Bank. It is pointed out that there is evidence on the record to show that this K. D. Shukla had mani-pulated the accounts of three other depositors, also, and the Bank had reimbursed those constituents for the loss, and here is no reason why a discriminatory treatment should have been meted out to the' plaintiff. It is argued that evidence on the record suggests that K. D. Shukla could be called upon to help other clerks, also, in transactions; with the Bank; that there could be no collusion between Bhagwatr Prasad and K. D. Shukla, because no man in his senses, would collude with another to cause deliberate monetary loss to himself or his wife.. It is emphasised that according to the statement of Bhagwati Prasad, the cheque for Rs. 4,000/- drawn by Bhagwati Prasad on the account of Bhagwati Prasad & Sons for transfer to the account of the plaintiff,, was handed over by him at the Bank's counter. With regard to all the disputed items, it is urged that the entries in the Pass Book showing-. these deposits in the plaintiff's accounts were, prima facie, sufficient:

- (1) [1966] 3 All E.L.R.593.
- (2) [1904-07] All E.L.R 460.
- (3) [1965] 2 All E.L.R. 725.

1015

to establish the plaintiff's claim and cast liability on the appellant. Our attention has also been drawn to the entries in the Bank's ledger showing the deposit of this amount of Rs. 4,000/- in the account of the plaintiff. It is maintained that if K. D. Shukla or any other employee of the Bank made these entries falsely in the Pass Book or in the Ledger, the plaintiff could not be made to suffer and that the Bank would for that fraud committed by the Bank's

employees in the course of their employment, be liable. It is contended that in the face of the entries in the Pass Book, the burden had shifted on the Bank to show, how it was not liable to make good the loss.

At the outset, it may be noted that the case of the plaintiff, as adumbrated in the plaint, was different from what was sought to be made out at the trial. It will bear repetition that in the plaint, it was pleaded that the plaintiff "quite often used to hand over the money and letter of instructions to him (K. D. Shukla), while this Clerk used to obtain the signatures of the officer on the Pass Book as usual. The plaintiff used to believe that the money had been deposited and she was satisfied about such deposits on perusal of the Pass Book.. She had never any occasion for suspicion" before August 1946.

At the trial, the plaintiff herself did not appear in the witness-box, instead. her husband Bhagwati Prasad appeared as a witness. His version was that it was he, and not his wife, who used to hand over the money and letter of instructions for deposit of the same in the plaintiff's Savings Bank account; and that he had deposited the amounts in cash or cheque at the counter behind which, at the same table, K. D. Shukla and one other clerk worked. Contrary to the case set up in the plaint, Bhagwati Prasad went to the length of saying that he did not send or deposit through K. D. Shukla any money in his wife's account with the defendant Bank. He equivocated even with regard to the patent fact that it was K. D. Shukla who had introduced the plaintiff and identified her signature on the Account Opening Form submitted to the Bank. He denied that the plaintiff ever sent her Pass Book to the Bank for completion through K. D. Shukla and the latter used to return the same to her after completion. He, however, conceded

"If he was present in the Bank, I may have deposited or paid some amount through him."

At this juncture, the witness was confronted with the contents of paragraph 3 of the plaint. Thereupon, he admitted that what was stated therein was correct. Bhagwati Prasad further admitted that K. D. Shukla was residing four or five houses, away from his house and he was known to the witness for the past 10 or 11 years.

Before dealing with the contentions canvassed, it would be useful to notice the settled legal principles which govern the vicarious liability of an employer for the loss caused to a customer through the misdemeanour or negligence of an employee.

The first of these principles is that the employer is not liable for the act of the servant if the cause of the loss or damages arose without

1016

his actual fault or privity and without the fault or neglect of his agents or servants in the course of their employment. This principle is best illustrated by the decision of the House of Lords in *Leesh River Tea Co. Ltd. & Ors. v. British India Steam Navigation Co., Ltd.* (supra). The facts of that case were that during her voyage a ship called at an intermediate port to discharge part of her original cargo and load some fresh cargo. The shipowners engaged a stevedore company to discharge and load. A servant of the stevedore company stole a brass plate, which was a cover that could be removed to the access to a storm valve. Its removal rendered the ship unseaworthy as sea water could enter when the ship rolled. The resulting hole in the ship was concealed by part of the fresh cargo loaded. On her voyage after leaving the port the ship encountered

heavy weather. Water entered through the hole and damaged part of the original cargo. In an action for damages by the owners of the damaged cargo, the shipowners contended that they were excepted from liability by Art. IV. Rule 2(q) of the Hague Rules, because the cause of the damage arose without their actual fault or privity and "without the fault or neglect of the agents or servants" of the shipowners. Dealing with this argument, Danckwerts, L.J. observed (at page 597) :

"It seems to me that the vital point in the case is whether the theft of the brass plate was made by the stevedore, at Port Sudan, in the course of his employment by the shipowners. He was to be regarded as the agent of the shipowners for the purpose of unloading and loading cargo. There is no doubt that this gave him the opportunity to effect the theft of the plate; but the stevedore was concerned with cargo and not with the ship or parts of the ship. When he deliberately stole the plate he was acting in a way which was completely outside the scope of his employment on behalf of the shipowners. The theft could not have been prevented by any reasonable diligence of the shipowners through the officers and crew of the ship."

Salmon, L.J., speaking in a similar strain (at page 599) emphasised that the fact that the thief's employment on board presented him with the opportunity to steal does not suffice to make the shipowners liable. The conclusion drawn was

"For an employee to, be liable, however, it is not enough that the employment merely afforded the servant or agent an opportunity of committing the crime."

It must be shown that, the damage complained of was caused any wrongful act of his servant or agent done within the scope or course of the servant's or a s employment, even if the wrongful act amounted to a crime. For this proposition, Salmon, L.J. referred to Lloyd V. Grace, Smith & Co.(1).

(1) [1912] A.C. 716.

1017

la United Africa Company Ltd. v. Baka Owoade(1) the Privy Council laid down that a master is liable for his servant's fraud perpetrated in the course of master's business, whether the fraud was for the master's benefit or not, if it was committed by the servant in the course of his employment. There is no difference in the liability of a master for wrongs whether for fraud or any other wrong committed by a servant in the course of his employment, and it is a question of fact in each case whether it was committed in the course of the employment.

In that case, the appellant-company, general merchants, had expressly committed to servants of the respondent, a transport contractor, at his request, goods for carriage by road, and the servants stole the goods, and the evidence established that that conversion took place in the course of their employment. The respondent was held liable to the appellants for the value of the goods.- The rule in Lloyd v. Grace, Smith & Co. (supra) was applied.

Now, let us apply these principles to the facts of the present case.

The plaintiff's case, as already noticed, in the plaint was that the various amounts had been handed over in cash or in cheque by her to K. D. Shukla, an employee of the Bank for

crediting in her Savings Bank- account with the defendant-Bank. But Shukla fraudulently misappropriated or converted the same to his own use.

Therefore, the first question that falls to be considered is whether the amounts, in question, were handed over by the plaintiff or on her behalf by her husband, Bhagwati Prasad, to K. D. Shukla in the course of the Bank's business ? In other words, was K. D. Shukla, while receiving these amounts from the plaintiff, acting as an agent of the plaintiff or of the Bank in the course of his employment ? This question, further resolves into the issue whether these amounts in question were handed over in the usual course of business in the Bank ?

Issue No. 1, framed by the trial court, is wide enough to cover this point. As already noticed, the trial court decided this issue, excepting with regard to the items of Rs. 4,000/- and Rs. 105/-, in favour of the plaintiff. The High Court, on appeal, decided this issue with regard to the item of Rs. 4,000/- in favour of the plaintiff.

Since it is contended that the court below has misread the evidence and has not paid due attention to some of its features, we propose to reexamine the same ourselves.

The main items shown in the Pass Book, as deposited in the respondent's Savings Bank Account are of Rs. 4,000/- and Rs. 8,000/-

In regard to the item of Rs. 4,000/- shown as deposited on September 17, 1945, Bhagwati Prasad testified :

"Rs. 4000/- was deposited by cheque on 17th September 1945. It was presented in the Bank on 10th September,
(1) 1955 A.C. 130.

1018

1945..... The counterfoil (Paper No. 4 of List 41/C) of

Rs. 4000/- relates to this cheque, showing the amount deposited on 17th September 1945. This is a crossed cheque. I had written a letter in Hindi to the Bank to deposit, the amount of this cheque in Shyama Devi's account."

In cross-examination, he clarified that this cheque for Rs. 4,000/-, dated 10th September 1945, was drawn by him on his account in favour of 'self'. The witness had drawn two parallel lines on it so as to make it a crossed cheque. He did not issue this cheque in Shyama Devi's name. This crossed cheque was handed over by the witness at the counter of the Bank. The Counter Clerk asked the witness to go away, assuring that the witness would later on receive the Pass Book with the amount duly entered in it. The witness then went out of station in connection with his bamboo business. On his return on the 17th September 1945, he went to the Bank., The Counter Clerk then asked the witness to deposit some money in cash before a new pass Book could be issued and the amount of the cheque credited by the transfer in the plaintiff's account. On the same day, the witness went to the Bank and deposited Rs. 415/- in cash. Thereupon, a new Pass Book was issued to the witness. The amount of Rs. 4000/- was shown as deposited in the account of the plaintiff on 17th September 1945., The cross-examination reveals that the witness did not obtain any receipt for the deposit of this cheque. He further admitted that he had crossed the cheque. so that it could not be credited to anybody else's account or be cashed by anyone also, but would go to his account. He further clarified that he had signed this cheque on its back as it was a 'self

cheque. He denied the suggestion that he signed the cheque on 10th September 1945 on its back, as he cashed it at the Calcutta National Bank. He expressed- ignorance if the payment of this cheque was paid by the Calcutta National Bank.

As testified by Shri A. Ganguli, who was Agent of the Imperial Bank at Allahabad in August 1946, the procedure for making deposits in an account with the Bank, was as follows:-

"When a depositor comes to deposit money in his or her Savings Bank account, the related voucher together with cash is tendered by him at the cash department counter in the Bank. The receiving Cashier counts and checks up the amount tendered, enters the items in the cash scroll maintained by him, certifies the voucher on, the back by his signature in token of having received the money and passes the voucher on to the Cashier for his signature. The Head Cashier after certifying the voucher sends it to the official in the Banking Department who enters the voucher in his cash scroll after branding, the voucher with the big 'received' round rubber stamp bearing the date of transaction. The voucher then goes to the ledger Keeper for entry in the relative account after which it is passed on to the Day-Book writer for entry. If the depositor had on that date lodged his pass-book with the Ledger-Keeper then the entry is also made in his

1019

pass-book and the pass-book together with the voucher and Ledger is sent to the official for attestation. The passbook need not necessarily be lodged with the Bank at the time of making the deposit but it must be produced when a withdrawal is effected. In the cash voucher that is tendered, the ledger's signature is invariably taken before the money is accepted by the Cashier."

It may be noted that whereas in the case of the undisputed items this procedure was followed, evidence with regard to the observance of this procedure is not available, in the case of the disputed deposits. Bhagwati Prasad has not produced any deposit receipt or voucher, evidencing the presentation of this crossed cheque for Rs. 4000/- in the Bank to any employee of the Bank, nor is there any entry in the cash scroll with regard to the deposit of any cash.

Another suspicious feature about this deposit was that being a crossed cheque drawn in favour of 'self', it could be deposited in the account of the drawer or the endorsee of the cheque only. It was not explained how it was cashed by the Calcutta National Bank. 'There was no evidence to show that in whose account in the Calcutta National Bank it was deposited. Bbagwati Prasad says that he had handed over a covering letter in Hindi from the plaintiff to the Bank, requesting it to transfer and deposit the amount of the cheque in the Savings Bank account of his wife, Shyama Devi. No such letter is forthcoming, nor is there any evidence on the record to show that the plaintiff made any attempt to call for the production of any such letter from the Bank. No question with regard to this letter was put to Shri A. Ganguli, the Agent of the Bank, or the other officials of the defendant-Bank who appeared as witnesses. Bhagwati

Prasad was a man of business. Why did he not straightaway endorse that cheque in favour of his wife? This interval of 7 days between the alleged presentation of the cheque, to the defendant-Bank and the date of the false deposit entry, i.e. 17th September 1945, is itself a very suspicious feature. The entry in the pass-book, showing the deposit of Rs. 4000/- on 17th September was obviously false. It is not disputed that this cheque of Rs. 4000/- (Ex. 20) had already been credited to some one else's account in the Calcutta National Bank Ltd. on the 15th September, 1945. So far as this deposit of Rs. 4000/- is concerned, it will not be wrong to say that the decree passed by the High Court against the defendant-Bank proceeded mainly on the ground that the false deposit entry in the Pass Book in respect thereto is in the hand of K. D. Shukla who was at the material time an employee of the Bank.

There is no corresponding entry in the Ledger of the Bank, showing that the amount of this cheque was first debited in Bhagwati Prasad's account and then transferred to the plaintiff's account.

The High Court was thus not right in reversing the finding of the trial court in respect of this item of Rs. 4000/-. The onus was on the plaintiff to show that she paid the amount to an employee of the

1020

Bank and was received by that employee in the course of his employment. The false and fraudulent entry about the deposit of this amount in the Pass Book, could not shift the onus on the Bank to prove the contrary.

This takes us to the next big deposit in dispute. This deposit of Rs. 8000/- consists of two items. In examination-in-chief, all that Bhagwati Prasad stated with regard to the deposit of this cheque and the transfer of this amount from his account to that of the plaintiff was thus :

"On 7th December, 1945 I deposited Rs. 8000/-. I gave a letter that a sum of Rs, 7000/- from my current account be transferred to the account of Shyama Devi and I deposited Rs. 1000/- in cash with the Bank."

He did not say as to which employee of the Bank he had handed over this cheque, and where. He did not even allege that he had received any voucher evidencing the deposit of this cheque or cash from the Bank, much less he produced any documentary evidence to show the deposit. Cross-examined, he expressed ignorance if the Bank had sent him any letter informing that Rs. 7000/- had been debited in his account and transferred to Shyama Devi's account. He further admitted that he did not receive or remember if any 'receipt' from the Bank transferring Rs. 7000/- from his account to Shyama Devi's account was obtained by him. In this connection, he added : "From the pass-book, I verified the, correctness of the entries and did not make further enquiries of the transfer of this amount of Rs. 7000/-."

The Bank's case was that it could not have accepted, the deposit of Rs. 7000/- for crediting to the Savings Bank Account as it would have been contrary to Rules 6 and 7 of the Savings Bank Rules. According to these Rules a depositor cannot pay a sum larger than Rs. 5000/-, at a time, nor can he deposit a sum exceeding Rs. 10,000/- in a year. When Bhagwati Prasad's attention was drawn to these Rules printed in the Pass Book, he stated that at the time of issuing this cheque, he was not aware of these Rules. Then there is the ledger entry (Ex. 19) which purports to show that Rs. 7000/- were withdrawn from the current account of

Bbagwati Prasad & Sons with the imperial Bank of India, Allahabad, on December 7, 1945, by cheque. The evidence of the Bank officials, Mahadeo Prasad and Shri A. Ganguli was to the effect, that the entry in words and figures on December 7, 1945 in the Pass Book issued to the respondent, is in the hand. writing of K. D. Shukla, while the initials against that entry in the relevant column purporting to be of Mahadeo Prasad (Head Cashier) were forged initials. The trial court allowed the respondent's claim in respect of this ten of Rs. 7000/-, on the basis that the entries in the Pass Book and the Statement of Ledger Account (Ex. 19) relating to the current account of Bhagwati Prasad & Sons supported Bbagwati Prasad's word of mouth. It did not accept Mahadeo Prasad's testimony, who was

1021

at the material time, a Sub-Accountant of the Bank to the effect, that the initials purporting to be his against the items of Rs. 105/-, Rs. 4000/-, Rs. 400/, Rs. 432/- in the Ledger Account, were not executed by him, but were imitations of his initials.

The High Court, at the appellate stage, admitted additional documentary evidence consisting of certain letters which passed between the defendant-Bank, the Agent of the Bharat Bank, Allahabad and Dass Bank Ltd. These letters would show that the Ledger Entry (Ex. P-9B) showing the withdrawal of Rs. 7000/- on December 7, 1945 from the current account of Bhagwati Prasad & Sons with the Imperial Bank, Allahabad, is a false entry. The first of these letters is date.(1 October 7, 1946 (Ex. 1) addressed by the Imperial Bank of India to the Agent, Bharat Bank Ltd., Allahabad. It is marked 'Private and Confidential'. It reads :

"Dear Sir,

Cheque No. 620149 dated 21st November, 1945 for Rs. 7000 drawn by Messrs Bhagwati Prasad & Sons.

We have been advised by Messrs Bhagwati Prasad & Sons, the drawer of the above cheque that this cheque was sent by him to us for credit of his account. From our records we are unable to trace this entry in our books. I shall, therefore be glad if you will advise me of the date on which and the name of the person or Bank to whom the amount of the above cheque was paid by you."

In reply, the Bharat Bank Ltd., on October 18, 1946, wrote (Ex. 3)

"Dear Sir,

With reference to your P&C letter, dated the 7th instant, we beg to advise that the amount of the cheque for Rs. 7000/in question was paid by us to the Dass Bank Ltd., on 21-11-45."

Thereupon, the Imperial Bank addressed a letter, dated October 22, 1946 (Ex. 2) to the Dass Bank Ltd., Allahabad, as follows :-

"Cheque No. 620149, dated 21st November, 1945 for Rs. 7,000 on Bharat Bank Ltd.

The above noted cheque was paid to you through the clearing on the 21st November, 1945. Please advise me for whose credit the above cheque was collected by you."

In reply, Dass Bank Ltd., informed the Imperial Bank by their letter, dated October 23, 1946 (Ex. 4) as follows :

". . . that the amount was realised by us in

cash from Bharat Bank Ltd. and was credited to our C.D. a/c Lal Babu on the 21st November, 1945.

1022

Further our records shows that the above was not presented, nor paid to us through the clearing, as you say, which please note."

From the additional documentary evidence admitted by the High Court, two facts emerge clear : (1) That the cheque for Rs. 7000/drawn by Bhagwati Prasad was not handed over in the normal course of business in the defendant-Bank for transfer to respondent's account in the regular manner; (2) That it was cashed and deposited in the personal account of Lal Babu alias K. D. Shukla with the Dass Bank Ltd. Although in the witness-box-in variance with the story in the plaint-Bhagwati Prasad did not clearly admit that the cheque was handed over to K. D. Shukla yet the inference deducible from fact no. (2) is that he had probably handed it over to K. D. Shukla after endorsing or signing on its back. If in these circumstances, K. D., Shukla, cashed that cheque and misappropriated the amount, could he be said to have caused that damage while acting in the course of his employment with the Bank? It is not disputed that K. D. Shukla was not, at the relevant times, incharge of the Savings Bank Counter at which the Savings account of the Respondent was dealt with. The letter, dated October 7, 1946 shows that Bbagwati Prasad had then advised the defendant-Bank that the 'cheque had been "sent" by him to them for credit of his account. Presumably, he sent it through K. D. Shukla treating him as his (or plaintiff's) agent. K. D. Shukla instead of depositing it with the Bank, manipulated to appropriate it himself. in such a situation, the act which caused the loss to the respondent could not be said to have been committed by Shukla in the course of his employment with the Bank. At the most, it could be said that the fact of his being an employee of the Bank and a friend of Bhagwati Prasad, gave him an opportunity to commit this fraud.

The rule in Leesh River Tea Co.'s case (supra), squarely applies to this situation. The appellant-Bank was therefore, not liable to make good the loss of Rs. 7,000/- caused to the Respondent, by the act of K. D. Shukla, while the latter was acting as an agent of the plaintiff and not within the scope of his employment with the Bank. Nor could the fact that false and fictitious entries to cover up his fraud, were made by K. D. Shukla in the Pass Book of the respondent and in the Ledger Account of Bhagwati Prasad & Sons, make the embezzlement committed by Shukla an act committed in the course of his employment with the Bank. The findings of the High Court with regard to the remaining items are not seriously disputed before us.

In view of all that has been said above, we allow the defendant's appeal and dismiss the plaintiff's claim with regard to Rs. 11,000/(consisting of the items of Rs. 4000/- plus Rs. 7000/-) and interest thereon. The decretal amount granted by the High Court shall stand reduced by Rs. 11,000/-, and interest thereon. There shall be no order as to costs.

Appeal allowed.

S.R.

10 23