

Forgery: An Offence under Banking Sector

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ABSTRACT:

Forgery in banking sector has been in existence from centuries and become a big business. Over the years, forgery in this sector has been known and increasing day by day due to increase in number of private and foreign banks i.e. increase in number of branches, increase in number of employees, increase in volume of business, increase in customers and spread of operation. Increase in banking sector has given rise to the white collar crime through forgery done by the employees of the bank or by the outsiders or by financial institution. There is a contractual relationship between banker and customer and bank is held liable for any fraudulent transaction. Bank must take remedial measure for prevention and detention of forgery. The fraud, forgery is generally found in exchange of services rely on information and technology and the absence of physical bank branches to provide these services to the customers. Forgery has been defined under section 463 of Indian Penal Code 1860, Section 464 of Indian Penal Code 1860 defines making of a false document and Section 465 of Indian Penal Code provides punishment for committing forgery. In this paper an attempt is made to understand the meaning of forgery, its punishment, their remedial measures and banker's liability for the payment of forged cheques.

Keywords: forgery, banker's liability, remedial measures.

I. INTRODUCTION

The number of frauds and forgeries in banks are increasing throughout the world. Forgeries are either committed by the employers of the bank or the outsiders. Sometimes, forgeries are committed by the outsiders with the help of bank employees or by the negligence of the bank employees. The RBI even set guideline to safeguards by way of suitable procedure and internal checks. However, the Reserve Bank of India advices commercial bank about major fraud and forgery prone areas and safeguard necessary for prevention.

II. MEANING OF FORGERY

Forgery is the false making or materially altering of records with intent to defraud, of any writing which if genuine, might apparently be of legal efficacy or the foundation of legal liability. Forgery is a false making of any writing instrument for the purpose of fraud or deceit, including every alteration of or addition to a true instrument.¹ In the nutshell we can say that forgery is the fraudulent making or alteration of any record, deed writing, register, stamp, instrument etc.

According to **Section 463** of Indian Penal Code, 1860 defines forgery as "Whoever makes any false documents or any false electronic record or part of a document or electronic record, with intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property or to tender into any express or implied contract, or with intent to commit fraud or that fraud may be committed,

¹ Dr. S.R. Myneni, *Law of Banking* 350 (Asia Law House, Hyderabad, 2nd Edition).

commits forgery.²

Explanation 1- A man's signature of his own name may amount to forgery

Explanation 2- A draws a bill of exchange, upon a fictitious person and fraudulently accepts the bill in the name of such fictitious person with intent to negotiate it, A commits forgery.³

Forgeries are committed by using computers. Some examples are: printing of counterfeit currency notes, certificates and stamp papers. Modern printers and scanners photocopiers are used to carry out such frauds.⁴

III. PUNISHMENT OF FORGERY

Forgery has been made an offence and the punishment for the forgery has been provided under Section 465 of the Indian Penal Code, 1860 which states that whoever commits forgery shall be punished with imprisonment for a term which may extend to 2 years or fine or both.⁵

IPC deal with using a forged document as genuine, using as genuine, forged or counterfeit currency notes or bank notes is punishable under Section 498B of IPC and possession of forged or counterfeit currency notes or bank notes is punishable under Section 498C of IPC.⁶

IV. REMEDIAL MEASURE

Both the prevention and detection of frauds through forgery are important for a bank. Forgery of signatures is the most continuing fraud in banking business. A banker as per legal obligation is supposed to know the signature of his customer and in case of any doubt he has to consult the specimen signatures of his customer, which has already been taken during the course of opening of account of a customer. The specimen signatures are always kept in safe custody of the bank. The bank should take reasonable care when the instrument has been presented either order or bearer, in case a bank pays forged instrument, he would be liable for the loss to the genuine customer.⁷

V. BANKERS LIABILITY FOR PAYMENT MADE ON FORGED CHEQUES

- **Banker Customer Relationship**

The relationship between a banker and his customer is that of a debtor and creditor. When a cheque with a forged signature is presented in the bank, the banker has no authority to make payment on it and if he does such

² The Indian Penal Code 1860 (45 of 1860).

³ *Supra* note 1.

⁴ *Indian Banking Frauds and Forgery*, available at: <https://www.lawordo.com> (visited on 28/03/19).

⁵ *Supra* note 2.

⁶ Dr. B.R. Sharma and Dr. R.P. Nainta, *Banking Law and Negotiable Instruments Act 165* (Allahabad Law Agency, Faridabad, 4th Edition, 2012).

⁷ *Ibid.*

payment the he would be acting contrary to the law and would be liable to the customer for the said amount.⁸ A bank in such cases can escape liability only if it can show that the customer is not entitled to make a claim on account of adoption, estoppel or ratification.⁹

*Canara Bank v. Canara Sales Corporation and Others.*¹⁰

It has been held that the bank can escape from liability only if it can establish knowledge to the customer of the forgery in the cheques and negligence for continuously long period cannot by itself provide a relevant ground for the bank to escape the liability.

- **Detecting of Forged Cheque**

There are always natural variations in the handwriting of an individual and there are fundamental variations in the handwriting of two persons, if the signature is carefully compared with the specimen signature. The forged signatures are written hesitatingly. The paying banker should carefully confirm that the cheque bears the genuine signature of the drawer after comparing the same with his specimen signature.¹¹ The bankers should check the cheques under the instruments with a magnifier and if he gets any doubt banker should reject the cheque.

*Prabhu dayal v. Jwala bank.*¹²

The banker was held liable for the loss, though the customer was not doubt negligence, but his negligence was not a proximate cause of the loss. Further it was held that it was the duty of the employees of the bank to identify the signature of the customer and if they fail to do so thereby suffer loss.

- **Protection Against Forgery**

According to **Section 82(2) of the Negotiable Instruments Act, 1881**, gives protection only when the payee or endorsed signature is forged and the banker makes payment in due course.¹³ If a banker pays a cheque which carries a forged signature of his customer, it does not amount to payment in due course. It is so because every banker is expected to know the signature of his own customers. Hence, he cannot even think of claiming protection in the case of forged endorsement of the drawer.¹⁴

However, if the customer by his conduct enables the forgery of his signature then the paying banker is relieved

⁸ Prof. N.N. Mitra and Mr. T.V. Mohandas Pai, *Banking Law* 174 (Distance Education Department National Law School of India University, Bangalore).

⁹ *Id.* at p.175.

¹⁰ (1987)2 SCC s666.

¹¹ Dr. S.R. Myneni, *Law of Banking* 351 (Asia Law House, Hyderabad, 2nd Edition).

¹² ILR 1938 All 634.

¹³ Negotiable Instruments Acts, 1881 (XXVI of 1881).

¹⁴ *Supra* note 11.

from his liability.¹⁵ Whether the customer has enabled the forgery or not depends upon the circumstances fact of the case.

National Westminster Bank v. Barclays Bank International Ltd. And another.¹⁶

It was held that the mere fact that a banker honoured a cheque, on which the customer's signature had been undetectable, forged and did not carry with it an implied representation of the banker to the payee that the drawer's signature was genuine and that the paying bank can recover money.¹⁷

Brewer v. Westminster Bank Ltd.¹⁸

It has been held that the bank did not obtain a good discharge by paying the forged cheques. Undoubtedly a banker who pays a forged cheque is bound to pay the amount against to his customer, because in the first instance he pays without authority.

Lewes Sanitary Loundary Co. V. Barclay Beven and Co.¹⁹

The secretary who was previously convicted for forgery was allowed to keep the company's pass book and cheque book. He forged the signature of the directors and obtained payment for many cheques. It has held that the banker was liable and the customer did not enable the forgery.

Bihar Cooperative Development And Cane Marketing Union Limited And Another.²⁰

The Supreme Court held that:

- Since one of the signatures on the cheque was forged, there was no mandate to the bank at all.
- A document in cheque form to which the customer's name as drawer is forged or placed thereon without authority is not a cheque but merely nullity.
- The bank was negligent in not ascertaining whether the signatures on the cheque were genuine.
- The circumstances attending to the encashment of cheque conclusively show that the bank was negligent and its officers were fraudulent right from the beginnings.
- The dishonesty of an official of the union was not the proximate cause of the loss to the bank.²¹

¹⁵ *Ibid.*

¹⁶ (1948) 56 Com. Cas. 482.

¹⁷ *Supra* note 13.

¹⁸ (1952) 2 All ER 650.

¹⁹ (1906) 11 Com Cas 255.

²⁰ AIR 1967 SC389.

²¹ Dr. S.R. Myneni, *Law of Banking* 353 (Asia Law House, Hyderabad, 2nd Edition).

*Greenwood v. Martins bank.*²²

Mr. Greenwood, the customer did not inform the banker of the forgery of his signature by his wife. He was silent even though he knew about the forgery. It has held that the customer was liable, as it is the duty of the customer to disclose the relevant information. So also, if the customer comes to know of any suspicious activities of any officer of a bank connected with banking, he must report the matter to the director immediately.²³

VI. CONCLUSION

Hence, it is understood that bank is liable for forged payment as there exist a contractual relationship between bank and customer is that of a debtor and creditor. Bank can escape from its liability when the customer had knowledge of the forgery and it is the duty of the customer to inform the bank about the irregularities when he come to know about it.²⁴ In case customer is unaware of any fraudulent transaction then duty will not exist.

²² AIR 1933 AC 51.

²³ *Supra* note 19.

²⁴ *Liability of Banks with regard to Fraudulent Transaction, India*, available at: www.mondaq.com (visited on 30/03/19).