



LAW week



Strike force to curb financial crimes soon

The government is going to set up an independent interagency strike force to fight money laundering and other financial crimes, including fund flow for terrorist activities. This was decided in a inter-ministerial meeting. The meeting also decided to form a financial intelligence unit to collect, analyse and disseminate information on suspicious fiscal transactions with relevant domestic and international law enforcement authorities. The meeting asked the law ministry and the attorney general to scrutinise the legal aspects of implementing the decisions and suggest frameworks. The meeting deliberated on whether the persons or organisations accused by the strike force of financial crimes should be tried by the Speedy Trial Court. The force will work under the attorney general and will include representatives of the BB, Criminal Investigation Department of police, Bureau of Anti-Corruption and the attorney general's office. It will be equipped with all required expertise for investigating money-laundering cases and will use the central bank as a source of information, data and expertise. Members of the force will be carefully chosen and awarded with a high-level salary to prevent corruption. - Law Desk.

Charges pressed in Manik Saha murder case

Khulna police have pressed charges against 13 people under the Explosive Substances Act for detonating a bomb that killed journalist Manik Chandra Saha. The Court of Chief Metropolitan Magistrate on March 29 received the charge sheet, submitted by the Investigation Officer (IO). The accused are Sumon alias Nuruzzaman, Akbar Ali Shikder alias Shaon, Akram, Abdus Sattar alias Disco Sattar, Abdur Rashid Shaikh alias Tapu, Shawkat Hossain alias Shokah, Altaf alias BDR Altaf, Mofizul, Sarwar Hossain alias Saro, Bellal, Kochi alias Omar Faruque, Mithu and Bulbul alias Bulu. Of them, Sumon, Akbar Ali Shikder, Akram and Bulbul are in jail custody while the rest are evading arrest. The chargesheet has been submitted keeping scope for supplementary chargesheet if necessary. Journalist Manik Chandra Saha was killed in a bomb explosion on 15 January near the Khulna Press Club. On 17 January SI Ranjit Kumar Das filed the case with Khulna thana. - Prothom Alo, 8 April.

HC bans Crown, Hunter

The High Court has declared production and marketing of energy drink Crown and malt beverage Hunter illegal. The court imposed the ban on the grounds of morality and public interest as the drinks contained alcohol. A division bench of Justice Shah Abu Naim Mominur Rahman and Justice Abdus Salam Mamun passed the orders following a writ petition filed by the beverage company managing director challenging cancellation of its registration by the Board of Investment (BoI). The Board on 1 March cancelled the registration of Crown Beverage Ltd. On 21 March the company filed the writ petition challenging the decision. -Prothom Alo, 7 April.

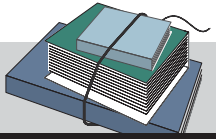
Murder case against 4 cops

A murder case has been filed against four policemen of Shyampur Police Station with the Court of Chief Metropolitan Magistrate. Jabeda Begum of 313, Muradpur at Noakhali in Shyampur accused Md Anwar Hossain, divisional probationary sub-inspector, and three constables Shahkawat, Ali Reza and Jalal Uddin of killing her son Mamun on 16 March. In the complaint, she said, Mamun went out at 4:40pm to a nearby tea-stall and several minutes later, an unknown boy came to inform her that police gunned down her son and took him away with them. The complainant and her husband went to Shyampur Police Station to learn that police had taken their son to Dhaka Medical College Hospital for treatment. Shortly afterwards, the parents found Mamun lying dead in a pool of blood at the emergency section of the hospital. On their return home at 8:00pm, they learnt from the locals that as the policemen entered the tea-stall, Mamun and several others started running. The police chased them for about 100 yards and fired at them and Mamun was shot. Anwar, the probationary sub-inspector, fired once again at Mamun to be sure of his death and took him away on a police van, said the complainant. She alleged Shyampur police refused to register the case and threatened her with implicating her other sons in false cases. Magistrate Jagannath Das Khokon took the case into cognisance and directed the officer-in-charge of Shyampur Police Station to take necessary steps on completion of an investigation into the matter. -Daily Star, 4 April.

Jayanti murder case transferred

Judge of Dhaka Metropolitan Sessions Judge's Court has sent the Jayanti Reza murder case to the Third Additional Metropolitan Sessions Judge's Court, Dhaka for quick disposal. The Detective Branch (DB) on March 30 indicted Azam Reza for killing his wife Jayanti Munsai alias Jayanti Reza and dropped the names of television performers Shampa Reza and Afsana Mimi from the charge sheet as the allegations against them could not be proved. Investigation officer (IO) submitted the charge sheet to the Court of Chief Metropolitan Magistrate, Dhaka after 82 days of the incident. The IO in the charge sheet said that primary investigation based on the first information report (FIR), statements of 20 witnesses and the post-mortem report found Azam Reza guilty. The IO quoting the post-mortem report said, death was due to cerebral failure resulted from head injury, which was homicidal in nature. Police recovered the body of Jayanti, a teacher of Australian International School, hanging from the ceiling fan in their Banani residence on January 9 afternoon. Jayanti's mother filed a General Diary (GD) with Gulshan Police Station, where she mentioned that Azam killed Jayanti to pave the way for making Mimi his life partner. Later, she filed a case accusing Azam Reza, his sister Shampa Reza and Afsana Mimi. -Daily Star, 6 April.

LAW lexicon



Public domain

A term of American copyright law referring to works that are not copyright protected, free for all to use without permission. Examples include works that were originally non-copyrightable (items that by their very nature are not eligible for copyright such as ideas, facts or names), copyright that has been lost or expired, where copyright is owned or authored by the federal government (federal documents and publications are not copyrighted and so are public domain), and those works which have been specifically granted to the public domain.

Puisne

Junior or lower in rank, as opposed to the chief justice. For example, there are 8 puisne judges on the Supreme Court of Canada and a chief justice.

Quantum meruit

Latin for "as much as is deserved." This is a legal principle under which a person should not be obliged to pay, nor should another be allowed to receive, more than the value of the goods or services exchanged.

Quasi-judicial

Refers to decisions made by administrative tribunals or government officials to which the rules of natural justice apply. In judicial decisions, the principles of natural justice always apply. But between routine government policy decisions and the traditional court forums lies a hybrid, sometimes called a "tribunal" or "administrative tribunal" and not necessarily presided by judges. These operate as a government policy-making body at times but also exercise a licensing, certifying, approval or other adjudication authority which is "judicial" because it directly affects the legal rights of a person. Some law teachers suggest that there is no such thing as a "quasi-judicial" decision or body; the body or decision is either judicial or not.

Quid pro quo

Latin: something for something. The giving of something in exchange for another thing of equal value.

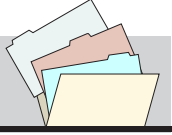
Quorum

The number of people who must be present at a meeting before business can be conducted. Without "quorum", decisions are invalid. Many organizations have a quorum requirement to prevent decisions being taken without a majority of members present.

Quo warranto

Latin and referring to a special legal procedure taken to stop a person or organization from doing something for which it may not have the legal authority, by demanding to know by what right they exercise the controversial authority.

Star LAW report



Bank may be held liable for forged cheques

High Court Division (Civil Original Jurisdiction)
Appeal from Original Decree No. 251 of 1999
Islami Bank and Others (Appellants)
Vs
Dewan Md. Yusuf (Respondent)
Before Mr. Justice Md. Tafazzal Islam and
Mr. Justice AHM Shamsuddin Chowdhury
Date of Judgement: 16.01. 2002

Background

AHM Shamsuddin Chowdhury J: This appeal is directed against the original judgement and the decree dated 28-2-1999 passed by the learned Subordinate Judge and Commercial Court No. 1, Dhaka in Money Suit No. 3 of 1995. By his judgement the Judge granted the relief the plaintiff asked for by way of monetary compensation to the tune of Taka 3,52,000 (three lack fifty-two thousand) only.

The salient facts as narrated in the plaint in this case are that the plaintiff, who accumulated some money by dint of his hard labour in South Korea, subsequently returned to Bangladesh with that money. On 20-2-1995 he opened a current account in his own name at the local branch of the defendant No. 1 bank. The plaintiff deposited a total of Taka 3,97,000 by making two deposits, on 22-2-1995. He was given a Cheque Book containing 25 pages bearing No. 1130301 to 1130325. On 22-2-1995 the plaintiff drew a cheque in favour of one Nazrul Islam for Taka 820 on page No. 1130301 of the Cheque Book, who, instead of encashing the cheque, returned the same to the plaintiff. On 22-3-1995 the plaintiff handed over a cheque drawn on page no. 11303003, for Taka 3,50,000 to his mother, Mrs. Khorsheda Aktar Gani. But the cheque was dishonoured by the defendant No. 1 bank with a memo stating "not arranged for," and returned on 23-2-1995. On receiving the news of the said bouncing, the plaintiff approached the defendant No. 2 and asked for the reasons, but the said defendant was unable to give a worthwhile explanation. A couple of correspondences, including legal notices, and replies, were exchanged between the parties afterwards, whereby the plaintiff claimed and the defendants refused to pay the sum in question. In the face of the defendants' persistent refusal to adhere to the plaintiff's request, he being left with no alternative, filed the present suit. The learned judge after hearing submission and analysing the evidences decreed the case in favour of the plaintiff.

Deliberation



The learned counsel for the defendants/appellant submitted that the bank's liability is never absolute. As long as the bank follows the principle of "due diligence" and resorts to the required degree of prudence, they are, in the prevailing state of the law, under no obligation whatsoever, to account for any loss that may be incurred by a customer in the plaintiff's position. To substantiate the claim that the bank has taken necessary precaution, and followed the required rules, and the expected standard of care, he submitted that the differences in signatures were too obscure to be detected by naked eyes. On the admitted difference as to the sizes as well as the colour of the two sets of cheques, his contention was that the variances were so minute that it was impossible to trace the differences without scientific aid. He submitted that the bank took recourse to every canon of care in disbursing the money as are done in the normal course of banking transaction.

The learned Advocate for the plaintiff/respondent contended that the bank's liability is generally absolute, and that the defences available to a bank are out of context in the scenario of this case, submitted that, as the differences in the signatures, in the colours and sizes of the cheques were not immediately detectable, DW 1 would not be able to identify the said differences so instantaneously with his bare vision. He also submitted that the banks bear a particularly distinctive responsibility as the custodian of the customers' money. This duty requires the banks to be on their guard in honouring cheques. He submitted further that in the instant case even a

minimum degree of care was not taken. He further pointed out that the number on two sets of cheques are conspicuously different in that there is and additional letter "A" on the forged cheques.

During the proceedings before us we had an opportunity to examine the cheques in question ourselves and we encountered no difficulty whatsoever to identify the difference without any help of any apparatus. We also noted that a minute, but not invisible, difference also existed in the colour of the two sets of cheques. The additional letter "A", should raise suspicion in the mind of any careful personnel involved in banking sector.

Mr Razzaq's submission on law point required us to travel deep into the field of the veritable mine of authority on that point. The obligation of the bank, so far as those cheques are concerned, which do not carry the customers' signature at all, the liability is nothing but absolute, subject only to the defences of estoppel, adoption or ratification. The legal position in this respect can be succinctly portrayed by reproducing some passages from the Privy Council's decision in the case of Tai Hing Cotton Mills Ltd vs Liuchong Bank Ltd (1985 2 All ER 947), in which case the judicial Committee for the Privy Council, in their decision on the fundamental premises that 'a cheque without customer's signature is not the customers' cheque at all'. The business of banking is not the business of the customer but of the bank. They offer services, which is to honour their customers' cheque 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. A customer must obviously take care in the way he draws his cheque. And must notice his bank as soon as he knows that a forger is committed in the account. The observations make it clear, that if a bank pays on a cheque which does not contain the customer's signature, the bank acts without mandate and cannot deny liability. The only limitation on bank's liability being based on customer's lack of care in drawing a cheque as well as on his deliberate abstention from informing the bank of forgery as happened in London Joint Stock Bank vs Maemillon (1918 AC 777), as well as in Greenwood vs Marting Bank Ltd (1933 AC 51 respectively.

In spelling out the limitation on bankers' liability, Lord Scarman, in Tai Hing Cotton Mills case expressed the view that in the absence of express agreement to the contrary, the duty of care owed by a customer to his bank in the operation of his current account was limited to a duty to refrain from drawing a cheque in such a manner as to facilitate fraud or forgery. And a duty to inform the bank of any unauthorised cheques purportedly drawn on the account as soon as the customer became aware of it. And that the customer was under not a duty to take reasonable precautions in the management of his business with the bank to prevent forged cheques being presented for payment, nor was he under a duty to check his periodical bank statements so as to enable him to notify the bank of any unauthorised debited items.

The Supreme Court of India in Canara Bank vs Canara Sales Corporation and others (AIR) 1987 SC 1603) approving of the ratio in Tai Hing Cotton Mills Ltd case in toto. The court stated that whenever a cheque purporting to be by a customer is presented before a bank it carries a mandate to the bank to pay. And if the signature on a cheque is a forged one, it is not the customers' signature and hence, that cheque carries no such mandate. And as such, the bank can, in such a case, escape liability only if it can establish knowledge of the customer about the forgery in the cheque. And that inaction for continuously long period, cannot by itself, afford a satisfactory ground for the bank to escape liability.

Having analysed the above legal position as enunciated by preponderance of authorities, we are unable to be swayed by Mr Razzaq's submission, rhetoric though it was, that the banks responsibility goes no further than adhering to the general duty of care in comparing the signatures in the normal way. And that the bank incurs no liability if it pays on a cheque does not bear the customer's signature, the liability, subject to the defence of estoppel, ratification and adoption, none of which falls within the context of the factual state of the present case, the bank's obligation is rather an absolute one. The protection as afforded by section 85 of the negotiable instruments Act, 1881, in respect of payment made in 'due to course' as defined by section 10 of the said Act, is relevant only in Macmillan (Supra) type situation, namely, where undetectable material alternation is caused to a cheque which does, nevertheless, contain customer's signature.

Mr Razzaq, when he argued that bank's liability is not absolute, possibly had sections 10, 85, 87, 88 and 89 of the Negotiable Instruments Act 1881, and the principle of payment "in due course" as is contemplated by section 85 of the said Act, in mind. But a cheque form, which, when drawn, is a bill of exchange, cannot attract section 5 of the Negotiable Instruments Act, as it pre-requires such a cheque to be "signed by the customer". This follows that none of the provisions of the said Act can be canvassed in aid by the bankers in respect to a cheque which does not satisfy section 5 as stated above. Provisions of the said Act can be availed only in a situation like that of Macmillan case (Supra), such as, where the amount in the cheque from, which contains customer's actual signature is enhanced by forgery. But that is not the case before us.

As to Mr Razzaq's submission that the plaintiff himself was a functionary in the process of forgery, we have to say that there is nothing in the evidence to back up the accusation that the plaintiff was instrumental to such a horrendous mischief. Mr Razzaq may be right, he may not be. None can dwell on speculation in the absence of concrete evidence. Not only that the burden of proving alleged fraud and deceit falls squarely and vertically on the bank, because of the rule "Probandi necessitas incumbit illi qui agit", But also, as the House of Lords unequivocally ordained in the widely acclaimed case of R vs Secretary of State for Home Department ex parte Khawja and Khera, 1984, AC 74, that although all questions in a civil case are to be determined on preponderance of probability, an allegation of criminal nature in a civil case is to be proved with a higher degree of probability.

Apart from the legal aspect discussed above, we must also make it clear that the fate of this appeal would not have been any different even if the legal position were otherwise, for, the weight of evidence is overwhelming to dispel the contention that the bank officials resorted to practicable degree of diligence and that the forgery was not detectable without the aid of scientific device.

Decision

Having perused the papers and the evidence and analysed the legal position as above, we are in no hesitancy to hold that nothing would justify our interference to disturb the judgement and the decree passed by the learned Court below. In view of above the appeal is dismissed without any order as to cost.

Advocate Abdur Razzaq with Advocate Shafil Alam Mahmood for the appellants; Advocate Syed AB Mahmudul Huq with Syed Mahmudul Ahsan, for the respondent.



LAW news

BNWLA celebrates its 25th anniversary

NAHID AFREEN

The members of the Bangladesh National Women Lawyers' Association (BNWLA) urged the female folk of the country to be more proactive and united to uphold the dignity of women and ensure access of the disadvantaged section of the society to the justice system. The member lawyers' met together in the convention as part of the seven day long program to celebrate the glorious Silver Jubilee of the association.

The occasion was inaugurated by Hon'ble Justice Syed Jillur Rahman Muddassir Husain, the Chief Justice of Bangladesh while

HE Aud Lise Norheim, Ambassador, the Royal Norwegian Embassy and HE Borje Mattsson, Ambassador, Embassy of Sweden attended the occasion as chief guest.

Bangladesh National Woman Lawyers' Association (BNWLA) has started its journey in 1979 through the committed efforts of some women lawyers of Bangladesh and it was subsequently registered as a legal body in 1981 under the Societies Registration Act 1860. Its mission is to "Enable women to become self-reliant, conscious of their rights and productive members of society founded on justice". Three keynote papers were presented on "Role of Men Lawyers

to combat violence in South Asian Countries perspective" by three renowned women lawyers, Advocate Fawzia karim Feroze of Bangladesh, Adv. Chandreyi Alam of India and Adv Ernestine Christaline Pinto of Pakistan in the morning session.

Justice ATM Afzal, the former Chief Justice of the Country chaired the session of the inauguration day. The 2nd day of the occasion was marked by the Regional Workshop on Prosecution of Women and Child Trafficker, which was chaired by the President of the organization. Three keynote papers were presented by three regional expert lawyers in the field of human trafficking in the

workshop.

The 3rd day of the occasion was marked by the visit of One Stop Crisis Center (OCC) at the Dhaka Medical College Hospital and a discussion meeting. In the 4 the days a discussion meeting titled 'Follow up Couples and Individuals' was organised by the association.

The divisional level sensitisation workshop as a part of the Silver Jubilee celebration was held at Rajshahi, Khulna and Chittagong. The seven day long celebration ended by a cultural program at the Rabindra Sarabar in the Dahanmondi area of the city.

Nahid Afreen is an Advocate

READER'S queries



Your Advocate



This week your advocate is M. Moazzam Husain of the Supreme Court of Bangladesh. His professional interests include civil law, criminal law and constitutional law.

Q: I am amazed to read reply of "Readers Query"; in Law & Our Right page, published on 14th February! It was related to reply to Mr. Abdul Quader's question. The point, which streaked my conscious conscience is- "a man, in sound mind can divorce his wife without assigning any cause"! Is it rational? What is the rule of almighty Allah? What so many women welfare organisations are doing? Please reply me a few questions:

1 Can a woman be divorced, following a serious injury to her body, with inability to take care of her husband? Of course the answer were "yes"; then what fate would be of their children? Who can own the children? How the law considers maternal love, in this country!

2. Can a woman divorce her husband, who has gone abroad recently, for 2 or 3 years? Can the divorce be legal without the consent of chairman or attributed committee? Can she marry another man? Obviously, the lady had long love affair with the other man!

3. Who would deserve her children? Her earlier husband or the new one?

Dr. Aunur Nahar, Dhaka.

Your Advocate: You have possibly taken the law in its literal meaning. Taken literally a particular legal phraseology may look harsh or confusing. It must be construed in its context and background to get into the true import and intentment. Talak in Islam is looked upon with strong disapproval. And Islam has in express words recognised the rights of women and ensured protection against exploitation and discriminations. Therefore, there is no reason of the law being devoid of rationale. The phrase-"without assigning any cause" does not mean arbitrary and capricious decision taken by the husband. There is no talak given without assigning causes. Well, the causes may be misconceived, misjudged or product of sudden outburst because it is strictly personal. The religious pundits are the people to look into it and arbitrate the matter. After the Muslim Family Laws Ordinance, 1961 came into being personal decision of talak was again brought under control and adjudication of Arbitration Council. In our personal law wife is also given power to divorce herself from her husband subject to delegation of such power by her husband. Moreover she can also obtain divorce by judicial decree. A kind of balance is struck between the parties. Laws have just kept the exits open for the parties to walk out of the bondage in cases of painful necessities.

Now let us turn to the questions you have set out for replies. Bodily injury or inability to take care of the husband cannot be valid grounds for divorce. Physical disability of the wife may at best be a reason for the husband to seek permission to take a second wife. The question of custody of the minor children are not dependent upon the question of divorce. Irrespective of divorce mother remains to be the primary custodian of her minor children if not otherwise disqualified. In case of female child mother is entitled to her custody until she attains puberty and in case of male child until he attains the age of seven years. Maternal love and affection in this regard is taken by law with utmost importance. But maternal or paternal love or affection is subjected to the overriding considerations of the wellbeing of the child. Law will be certainly slow in giving importance to maternal love of the kind of lady you have indicated in your second and third questions taken together.

Your second and third questions read together suggests existence of a problem underlying the academic questions. So far as the academic interest is concerned the reply lies in the foregoing paragraphs. And going or living abroad has nothing to do with divorce. If a husband's whereabouts are not known for a period of four years or more it may be a ground for the wife to go for a suit for dissolution of marriage. In cases coming within the sweep of the Muslim Family Laws Ordinance the notice of divorce must be addressed to the Chairman (Mayor, in cases of cities) with a copy to the party sought to be divorced. And unless the requirement of law is fulfilled the divorce is not valid. Therefore, it is needless to say that marrying another man without divorce being legally effective is no marriage in the eye of law.

Lawyers always tend to look into problems and devise redresses. The underlying problem that transpires is- a lady long in love with a gentleman was somehow married to another man. Now she wants to divorce her husband and marry her paramour. You want to know the way out provided by law. Well, if the power of divorce is delegated to her by her husband she may divorce herself from her husband by a notice addressed to the local Chairman with a copy of the notice served upon her husband. And the talak may be effected by operation of law upon observations of certain legal formalities. Moreover, the option for filing a suit for dissolution of marriage is there if it can be shown that there is one or more of the grounds for the same required in Section 2 of the Dissolution of Muslim Marriage Act, 1939.

As for deserving the children both by the husband and the paramour-turned- husband I am sure you have not solicited any answer. So I restrain.

Corresponding Law Desk

Please send your mails, queries, and opinions to: Law Desk, The Daily Star, 19 Karwan Bazar, Dhaka-1215; telephone 8124944, 8124955, 8124966; fax 8125155, 8126154; email <dslawdesk@yahoo.co.uk>