PETITIONER:
U. PONNAPPA MOOTHAN SONS, PALGHAT

Vs.

RESPONDENT:
CATHOLIC SYRIAN BANK LTD. AND OTHERS

DATE OF JUDGMENT18/09/1990

BENCH:
REDDY, K. JAYACHANDRA (J)
BENCH:
REDDY, K. JAYACHANDRA (J)
VERMA, JAGDISH SARAN (J)

CITATION:
1991 AIR 441 1990 SCR Supl. (1) 542
1991 SCC (1) 113 JT 1990 (4) 94
1990 SCALE (2)579

ACT:
Negotiable Instruments Act, 1881--Section 9--'Holder in due course'--No defect in the title of the transferor--Requirement of.

HEADNOTE:
What is the true meaning and scope of the expression 'holder in due course' as defined in Section 9 of the Negotiable Instruments Act, 1881, was the question that arose for consideration in this appeal.

Consequent upon the pleading of promissory note and other title deeds relating to her property by Defendant No. 5, (mother of Defendants 2 to 4) in favour of the respondent Bank as security, thereby creating an equitable mortgage, the respondent Bank allowed credit facilities like accommodation by way of Hundi discount, Key loan and cheque purchases upto a limit of Rs.35,00,000 to Defendant No. 1, a firm consisting of defendants Nos. 2 to 4 as partners. The first defendant firm had business dealings with the appellant defendant No. 6. In course of business it was supplying goods consisting of hill products and used to receive payment by way of cheques from defendant No. 6. Defendant No. 6 issued two cheques drawn on the Union Bank of India, Palghat, in favour of the first defendant payable to the first defendant firm on order. The cheques were purchased by the Respondent-bank and proceeds thereof were credited by the bank to the account of first defendant, on valid consideration. The first defendant withdrew the amount at various dates. When the respondent-bank sent the cheques for collection, the Union Bank of India returned the cheques with the endorsement "full cover not received". Defendants 2 to 5 agreed to pay the amounts to the Bank but could not pay the full amount, with the result the Bank filed a suit for recovery of the balance amount from Defendant No. 6 also who had issued the cheques in question. At the trial, Defendant No. 6 contended that since the firm (defendant No. 1) did not supply the goods, it could not pay the money in the bank. According to Defendant No. 6, the appellant, did not admit the purchase of cheques by the respondent-bank for valid consideration and hence denied that the bank was 'holder in due course'. The trial court held that the re-

spondent-bank is a 'holder in due course' and as such entitled to enforce the liability against the appellant-defendant No. 6.
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The trial court also held defendants 2 to 4 personally liable for the plaint claim. Against the order of the trial court the appellant-defendant No. 6 alone appealed to the High Court. The High Court affirmed the findings of the trial court but modified the decree holding that the immovable properties mentioned in the schedule to the plaint would first be proceeded against and in case the entire amount of decree is not realised by the sale of those properties, the Bank would proceed against the assets of the firm--defendant No. 1 and for the balance, if any, the decreeholder would proceed against the defendants Nos. 2-4 and 6. Aggrieved by the said order of the High Court, the 6th defendant has preferred this appeal.

Dismissing the appeal, this Court,

HELD: Indian Law is stricter, and is not satisfied merely with the honesty of the person taking the instrument, but requires the person to exercise due diligence, and goes a step further than English Law in scrutinising the causes which go to make up the belief in the mind of the transferee. [359B]

In the instant case, the holder namely defendant No. 1 made the necessary endorsements in the two cheques in favour of the plaintiff Bank and the Bank endorsed "payee account credited". The defendant No. 1 withdrew this amount and there is no dispute about it. It must also be noted in this context that there is no endorsement on the cheque made by the drawer namely the appellant that cheques are not negotiable. In the absence of the cheques being crossed "not negotiable" nothing prevented the plaintiff Bank to purchase the cheques for a valuable consideration and the presumption under Section 118(g) comes to his rescue and there is no material whatsoever to show that the cheques were obtained in any unlawful manner or for any unlawful consideration. [358E-G]

In a given case it is left to the court to decide whether the negligence on part of the holder is so gross and extraordinary as to presume that he had sufficient cause to believe that such title was defective. [370A]

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 cir-
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cumstances in each case. The words "without having sufficient cause to believe" have to be understood in this background. [370B-C]

In the instant case, there is also an implied contract to credit the proceeds of the cheques in favour of defendant No. 1 to his account before actually receiving them. As a question of fact this aspect is established by the evidence on record. In such a situation the plaintiff need not make enquiries about the transactions of supply of goods etc. that were going on between defendants No. 1 and 6. Even if defendant No. 1 has not supplied the goods in respect of which the cheques in question were issued by defendant No. 6 there was no cause at any rate sufficient cause for the plaintiff to doubt the title of defendant No. 1 nor can it be said that the plaintiff acted negligently. Viewed from this background it cannot be said that there was sufficient

cause to doubt the title nor there is scope to infer gross negligence on the part of the plaintiff. [370E-G]

Nelson v. Larhold, [1948] 1 K.B. 339; Baker v. Barclays Bank Ltd., [1955] 2 All E.R. 571; Gill v. Cubitt English Reports, 107 Kings' Bench 806; Durg Shah Mohan Lal Bankers v. Governor General in Council and Others, AIR 1952 Allahabad 590; Sunderdas Sobhraj, a firm v. Liberty Pictures, a firm, AIR 1956 Bombay 618; A.L. Underwood Ltd. v. Bank of Liverpool and Martins; Same v. Barclays Bank, [1924] All E.R. 230 at page 241, referred to.

Raghavji Vizpal v Narandas Parmanandas Bombay Law Reporter, Vol. VIII (1906) 921, Overruled.

Chitty on Contracts, 26th Edn. Paragraphs 2778 & 2781; Chalmers on Bills of Exchange, 13th Edn. at p. 283; Parathasarathy on Cheques in Law and Practice, 4th Edn. p. 74; Halsbury's Laws of England, 4th Edn. paragraph 221 page 186 and paragraph 222, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 183 of 1984.

From the Judgment and Order dated 23.10.1982 of the Kerala High Court in A.S. No. 309 of 1977.

Dr. Y.S. Chitale, Aseem Mehrotra, Mukul Mudgal, R.K. Aggarwal, S.K. Aggarwal and Sudhir Gopi for the Appellant.

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G. Viswanatha Iyer and P.K. Pillai for the Respondents.

The Judgment of the Court was delivered by

K. JAYACHANDRA REDDY, J. In this appeal an important question touching upon the interpretation of Section 9 of The Negotiable Instruments Act, 1881 ('Act' for short) defining 'holder in due course' falls for consideration. The appeal is directed against the judgment of the High Court of Kerala confirming the judgment of the Subordinate Judge, Tellicherry in Original Suit No. 74 of 1975. To appreciate the question involved it becomes necessary to state the relevant facts and while stating so we shall refer to the parties as arrayed in the suit for convenience sake.

The plaintiff Catholic Syrian Bank Ltd. is a banking company incorporated under the Indian Companies Act having its Head Office in Trichur and branches at various places. The first defendant firm consisting of defendant Nos. 2 to 4 as partners who are brothers, was doing business in Tellicherry in hill produces and they were allowed credit facilities by the plaintiff Bank, like accommodation by way of Hundi discount, key loan and cheque purchases upto a limit of Rs.35,00,000. A promissory note was executed by defendants Nos. 2 to 4 in favour of their mother, the 5th defendant for an amount of Rs.35,00,000 and the same was endorsed in favour of the plaintiff as security for the facilities granted to the first defendant firm. The 5th defendant had also deposited the title deeds of her properties shown in the plaint schedule to create an equitable mortgage to secure the repayment of the amounts due from first defendant. The first defendant firm had dealings with 6th defendant as well as others. The first defendant firm was supplying goods consisting of hill products and used to receive payments by way of cheques. On 26.10.74, 6th defendant drew a cheque on the Union Bank of India, Palghat Branch in favour of the first defendant payable to the first defendant firm on order a sum of Rs.2,00,000. The cheque was purchased by the plaintiff Bank from the first defendant on 30.10.1974 on valid consideration and proceeds were credited by the

Bank to the account of the first defendant. Similarly another cheque was drawn on 31.10.1974 and the first defendant endorsed the same to the plaintiff for valid consideration and the proceeds were credited to the account of the first defendant who withdrew the amount at various dates. The plaintiff Bank sent the cheques for collection but the Union Bank of India returned the same with the endorsement "full cover not received". The defendant Nos. 2 to 5 by two separate agreements offered to pay
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the amounts to the plaintiff Bank and as per the terms therein they were to pay Rs. 1,000 per month and the 5th defendant was to pay the amount realised by her from the tenants by way of rent and they could pay only 12,3 13.35 p. Thereupon after exchange of notices between defendant No. 6 and other defendants a suit was filed for the recovery of the balance amount from defendant No. 6 also who issued the cheques.

The defendant No. 6 who is the appellant herein, contended that the cheques-were issued to the first defendant on their representation that they would supply a large consignment of pepper, dry ginger etc. and the understanding was that the cheques would be presented only after the consignment was despatched. Since the first defendant failed to despatch the goods, the 6th defendant could not pay the money in the Bank and therefore the cheques were not honoured. He also pleaded that he would not admit the purchase of cheques by the plaintiff and that plaintiff was only a collection agent and there was no consideration for purchase and therefore the plaintiff was not a holder in due course. It was also contended that plaintiff acted negligently and in disregard of the provisions of law, therefore there was no valid cause of action against the defendant. It may not be necessary for us to refer to the stand taken by the other defendants. The trial court held that the plaintiff is a 'holder in due course' and as such is entitled to enforce the liability against the 6th defendant, who is the maker of the cheques. The trial court also held that the defendant Nos. 2 to 4 were personally liable for the plaint claim and the assets of the first defendant would also be liable if the hypothecation is not sufficient to discharge the decree amount. The 6th defendant alone filed an appeal in the High Court and the others figured as respondents. The High Court confirmed the findings of the trial court but modified the decree holding that immovable properties described in the Schedule to the plaint would be proceeded against in the first instance and if the entire decree amount cannot be realised by the sale of those properties, the plaintiff-Bank would proceed against the assets of the first defendantfirm, and for the balance, if any, the decree-holder would proceed against defendants Nos. 2 to 4 and 6 and the liability of the 5th defendant is restricted to the extent of immovable properties mortgaged by her. Aggrieved by the said judgment and decree, the 6th defendant has preferred this appeal.

Dr. Chitale, learned counsel appearing for the appellant submitted that respondent No. 1 herein namely the plaintiff-Bank is not a 'holder in due course' and therefore cannot maintain any legal action
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against the appellant i.e. defendant No. 6 who had drawn the cheques. His main submission is that the plaintiff Bank acted negligently and did not act in good faith in paying the amounts due under the cheques to the defendant firm without making any enquiries regarding the "title" of the person namely defendant No. 1 from whom the Bank claims to

have purchased the cheques for consideration. It is submitted that the cheques were issued by defendant No. 6, the appellant, with the understanding that the goods would be supplied and the plaintiff Bank without making any enquiries whether the goods were supplied or not and without any verification from the Union Bank of India paid the amounts to the payee namely defendant No. 1 within few days in a hasty and negligent manner. Therefore, according to the learned counsel, the necessary ingredients of the definition of 'holder in due course' in the case of plaintiff are not satisfied and consequently the plaintiff Bank can not maintain any claim against the appellant.

Section 9 of the Act which defines 'holder in due course' reads as under:

"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 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."

The definition makes it clear that to be a 'holder in due course' a person must be a holder for consideration and the instrument must have been transferred to him before it becomes overdue and he must be a transferee 'in good faith and another important condition is that the transferee namely the person who for consideration became the possessor of the cheque should not have any reason to believe that there was any defect in the title of the transferor.

It is beyond dispute that the plaintiff bank credited the proceeds to the account of the first defendant who also withdrew the amount on various dates. Therefore it has been rightly held that the plaintiff purchased the cheques for valid consideration after the necessary endorsement by the bearer before they became overdue. In this con-

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text, the learned counsel. however, contended that the plaintiff was only a holder and was only a collection agent as per the endorsement made by the defendant No. 1. Section 8 defines 'holder' as a person entitled in his own name to the possession of a cheque or bill of exchange or a promissory note and to receive or recover the amount due thereon from the parties thereto. Section 118 of the Act which deals with the presumptions as to negotiable instruments provides in clause (g) that the holder of a negotiable instrument shall be presumed as a holder in due course. Section 118(g) reads as under:

"118. Until the contrary is proved, the following presumptions shall be made:

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(g) 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 accept or 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."

In the instant case, the holder namely defendant No. 1 made the necessary endorsements in the two cheques in favour of the plaintiff Bank and the Bank endorsed "payee account credited". The defendant No. 1 withdrew this amount and there is no dispute about it. It must also be noted in this

context that there is no endorsement on the cheque made by the drawer namely the appellant that the cheques are not negotiable. In the absence of the cheques being crossed as "not negotiable" nothing prevented the plaintiff Bank to purchase the cheques for a valuable consideration and the presumption under Section 118(g) comes to his rescue and there is no material whatsoever show that the cheques were obtained in any unlawful manner or for any unlawful consideration.

Now the question is whether the other requirement of the definition i.e. "without having sufficient cause t9 believe that any defect existed in the title of the person from whom he derived his title" is satisfied. It is contended on behalf of the appellant that the cheques were issued on the representation that the defendant No. 1 would
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supply the goods and that the cheques would be presented after the despatch and delivery of the goods but defendant No. 1 failed to despatch the goods and that plaintiff without any enquiries about the title of the payee could not have purchased the cheques because there was sufficient cause to believe that the title of the bearer was not free from defects. According to the learned counsel, the Indian Law is stricter, and is not satisfied merely with the honesty of the person taking the instrument, but requires the person to exercise due diligence. and goes a step further then English Law in scrutinising the causes which go to make up the belief in the mind of the transferee.

To appreciate the submission of the learned counsel it becomes necessary to refer to the various authorities cited by him including the text books, in the first instance an English law and then on Indian Law on the subject. In English Law, Section 29 of the Bills of Exchange Act, 1882 defines 'holder in due course'. The relevant part of Section 29(1)(b) reads thus:

"29. Holder in due course--(a) A holder in due course is a holder who has taken a bill, complete and regular on the face of it, under the following conditions. namely:

(a) xx xx xx

(b) that he took the bill in good faith and for value, and that at the time the bill was negotiated to him he had no notice of any defect in the title of the person who negotiated it."

Section 90 of this Act reads as under:

"90. Good faith:--A thing is deemed to be done in good faith within the meaning of this Act, where it is in fact done honestly, whether it is done negligently or not."

These provisions have been understood and interpreted to mean that the holder should take the bill in good faith and he is deemed to have 'acted in good faith and if he acts honestly and negligence will not affect his title.

In Byles of Bills of Exchange, 25th Edn. Page 206 a passage reads thus:
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"A wilful and fradulent absence of inquiry into the circumstances, when they are known to be such as to invite inquiry, will (if the jury thinks that the abstinence from inquiry arose from a suspicion or belief that inquiry would disclose a vice in the bills) amount to general or implied notice." There must, however, be something to put the holder on inquiry."

In Nelson v. Larholt, [1948] 1 K.B. 339 the defendant received cheques for value drawn by an executor in fraud of the testator. Denning, J. held that the defendant could not escape liability because he knew or ought to have known of

the executor's want of authority. In Baker v. Barclays Bank Ltd., [1955] 2 All E.R.' 571 the expression "notice" occurring in Section 2(1)(b) of the Bills of Exchange Act, 1882 is interpreted to mean actual notice and there is no question of constructive notice.

In Chitty on Contracts, 26th Edn. the learned author states the requirement that must be fulfilled before a person may be considered a holder in due course as under:

"First, he must take the bill when it is complete and regular on its face. Secondly, he must take it before it is overdue and without notice that it was previously dishonoured, if such was the fact. Knowledge that a bill is bound to be dishonoured may also be relevant. Thus, a Canadian authority suggests that a holder, who has taken a cheque with the knowledge of its having been countermanded, is not a holder in due course. Thirdly, he must -take it in good faith and without having notice of any defect in the title of the person who negotiates the bill to him. In particular the title of the person who negotiates the bill is defective when he obtained the bill or its acceptance by fraud, duress or other unlawful means, or for an illegal consideration, or when he negotiates it in breach of faith or under circumstances amounting to fraud. Last, a holder in due course must take the bill for value i.e. consideration."

The learned author dealing with the presumption of good faith has noted in paragraph 2781 thus:

"Presumption of good faith. Every party whose signature appears on a bill is prima facie deemed to have become a

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party thereto for value. Every holder of a bill is prima facie deemed to be a holder in due course; but if the acceptance, issue or subsequent negotiation of the bill was affected with fraud, duress or illegality, the burden of proof is shifted, and the holder must prove that. subsequent to the alleged fraud or illegality, value was in good faith given for the bill. Thus, once a fraud is proved. the burden of proof is shifted to the holder who must then show not only that value has been given for the bill. but also that he took the bill in good faith and without notice of the fraud. If the holder can discharge this onus he is, again, in the position of a holder in due course."

(emphasis supplied)

The learned author Chitty in paragraph 2778 dealing with the subject 'The Consideration for a Bill' has stated thus:

"For example, if a person whose banking account is overdrawn negotiates to this bankers a cheque. drawn by a third party, to reduce the overdraft, the banker becomes a holder for value of the cheque. The pre-existing debt of the overdraft is a sufficient consideration for the negotiation of the cheque to the banker."

A consideration of the above passages and decisions goes to show that English law requires that the holder in taking the instrument should act in good faith and that he had no notice of any defect in the title and if he has acted honestly, he is deemed to have acted in good faith whether it is negligently or not. With the above background of English Law. we shall now examine the Indian law on the subject.

In Bhashyam & Adiga on the Negotiable Instruments Act, 15th Edn. at page 171, the authors have dealt with the position in Indian law and it is observed that it would be Seen that the Indian Legislature has adopted the older English law as laid down by Abbott. C.J., (later Lord Tenterden) in Gill v. Cubitt, English Reports 107~ King's Bench 806. Relying on this passage the learned counsel proceeded to submit that the Indian law is stricter than English law

and requires the person to exercise due diligence and in this context the Indian law goes even a step further than English law in scrutinising the causes which go to make up the belief in the mind of the transferee. Gill's case (supra) is a case where a bill of exchange was stolen during the night. and taken to the office of a discount broker early in the following
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morning by a person whose features were known, but whose name was unknown to the broker and the latter being satisfied with the name of the acceptor, discounted the bill, according to his usual practice, without making any enquiry of the person who brought it. On these facts it was held that the plaintiff had taken the bill under circumstances which ought to-have excited the suspicion of a prudent and careful man.
Abbott. C.J. (later Lord Tenterden) observed:
"It appears to me to be for the interest of commerce, that no person should take a security of this kind from another without using reasonable caution. If he takes such security from a person whom he knows, and whom he can find out, no complaint can be made of him. In that case he has done all any person could do. But if it is to be laid down as the law of the land. that a person may take a security of this kind from a man of whom he knows nothing, and of whom he makes no enquiry at all, it appears to me that such a decision would be more injurious to commerce than convenient for it. by reason of the encouragement it would afford to the purloining, stealing, and defrauding.persons of securities of this sort. The interest of commerce requires that bona fide and real holders of bills, known to be such by those with whom they are dealing, should have no difficulties thrown in their way in parting with them. But it is not for the interest of commerce that any individual should be enabled to dispose of bills or notes without being subject to inquiry."
Bayley, J. agreeing with Abbott, C.J.. however, added:
admit that has been generally the case; but I consider it was parcel of the bona fides whether the plaintiff had asked all those questions which, in the ordinary and proper manner in which trade is conducted, a party ought to ask. I think from the manner in which my Lord Chief Justice presented this case to the consideration of the jury, he put it as being part and parcel of the bona fides; and it has been so put in former cases."
Holroyd. J., having agreed with Abbott, C.J. further observed that:
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"The question whether a bill or note has been taken bona fide involves in it the question whether it has been taken with due caution. It is a question of]act for the jury, under all the circumstances of the case. whether a bill has been taken bona fide or not; and whether due and reasonable caution has been used by the person taking it. And if a bill be drawn upon parties of respectability capable of answering it, and another person discounts it merely because the acceptance is good, without using due caution, and without inquiring how the holder came by it, I think that the law will not, under such circumstances, assist the parties so taking the bill, in recovering the money. If the bill be taken without using due means to ascertain that it has been honestly come by, the party, so taking on himself the risk for gain. must take the consequence if it should turn out that it was not honestly acquired by the person of whom he received it. Here the person in possession of the bill was a perfect stranger to the plaintiff, and he discounted it, and

made no inquiry of whom the bill had been obtained, or to whom he was to apply if the bill should not be taken up by the acceptor. I think those circumstances tend strongly to show that the party who discounted the bill did not choose to make inquiry, but supposing the questions might not be satisfactorily answered, rather than refuse to take the bill, took the risk in order to get the profit arising from commission and interest."
(emphasis supplied)
In Chalmers on Bills of Exchange, 13th Edn. at page 283 the learned author deals with the expression good faith' occurring in Section 90 of the said Act and it is stated as under:
"Test of bona fides
The test of bona fides as regards bill transactions has varied greatly. Previous to 1820 the law was much as it now is under the Act. But under the influence of Lord Tenterden (Abbott, C.J. in Gill v. Cubbitt) due care and caution was made the test, and this principle seems to be adopted by Section 9 of the Indian Negotiable Instruments Act."
(emphasis supplied)
The learned author Parathasarathy in his book 'Cheques in Law and
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Practice'. 4th Edn. has also noted this aspect. At page 74, a passage reads thus:
"The Indian definition imposes a more stringent condition on the holder in due course than does the English definition. Under English law, he should not have notice of a defect in the transferor's title and he should have taken the instrument in good faith. Under Indian law, there should be no cause to believe that any such defect existed. Hence, it is not sufficient if the holder acts in good faith. He should also exercise due care and caution in taking the instrument. Perhaps, the Indian definition is based on Gill v. Cubbit, [1824] 3 B & C 466)".
In Raghavji Vizpal v. Narandas Parmanandas, Bombay Law Reporter Vol. VIII (1906) 921 the Bombay High Court, however. held that negligence does not affect the title of a person taking the instrument in good faith for value. It is observed thus:
"The test of good faith in such cases is thus: Regard to the facts of which the taker of such instruments had notice is most material whether he took in good faith. If there be anything which excites suspicion that there is something wrong in the transaction, the taker of the instrument is not acting in good faith if he shuts his eyes to the facts presented to him and puts the suspicions aside without further inquiry."
(emphasis supplied)
We may also mention it here that there is no reference to Gill's case in the above decision. In Bhashyam & Adiga on the Negotiable Instruments Act, 15th Edn. at page 172. the author having noticed the ratio in Raghavji's case observed:
"The Bombay High Court quoted the later English decisions with approval and applied them to the facts of the case before them, but the question is not discussed in the light of the words of this Section, and the decision is opposed to the opinion expressed by Chalmers in his commentaries on the Indian Act."
In Durga Shah Mohan Lal Bankers v. Governor General in Council & Others, AIR 1952 Allahabad 590 a Division Bench examined the scope
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of the provisions of Section 9 of the Act and held that:

"The provision that the person must have become possessor of a cheque "without having sufficient cause to believe" is more favourable to the person who claims to' have become holder in due course than the words "acting bona fide". His claim would be defeated only if it is found that there was sufficient cause for him to believe that a defect existed. If he fails to prove bona fides or absence of negligence, it would not negative his claim. There must be evidence of positive circumstances on account of which he ought to have believed that some defect existed."

(emphasis supplied)

In this case also there is no reference to Gill's case. The learned counsel for the appellant submitted that the decision in Raghavji's case is in favour of the appellant. He. however. conceded that the Durga Shah's case is in favour of the respondent i.e. the plaintiff Bank. We may, however, note another judgment of the learned Single Judge of the Bombay High Court in Sunderdas Sobhraj, a firm v. Liberty Pictures, a firm, AIR 1956 Bombay 618 wherein the scope of Section 9 is considered and it is held thus:

"The rule as laid down in S. 9 of the Negotiable Instruments Act which defines "holder in due course" is stricter than the rule of English law on the subject and a payee or endorsee of a negotiable instrument can, under our.law. prefer a claim to be a holder in due course of the instrument only if he obtained the same without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title.

A bona fide holder for value without notice is, of course. as I have already observed. in a different position."

The learned Single Judge has not. however. referred to the Raghavji's case. We have. already noted that in Raghavji's case reliance was placed on English decisions later to the decision in Gill's case. The authors Chalmers. Bhashyam & Adiga and Parathasarathy have uniformly stated that Section 9 of the Act is based on the ratio in Gill's case. Learned counsel appearing on both sides could not place any other decision directly on the question. The view taken by the Allahabad High Court in Durga Shah's case is more or less in accordance

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with the principle laid down in Gill's case.

However, with regard to the legal importance of negligence in appreciating the principle of "sufficient cause to believe" a passage from Chalmers' took "The Law Relating to Negotiable Instruments in British India" 4th Edn. may usefully be noted:

"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)

This view is more sound and logical. The legal position as explained by Chitty may be noted in this context which reads as under:

"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's 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 can not negligently disregard a "red flag" which arouses suspicion regarding the title. In this view of the matter we hold that the decision in Raghav. ii's case does not lay down correct law. We agree with the view taken by the Allahabad High Court with above modification.

Before we apply the above principles to the facts of this case we would like to advert to another submission of the learned counsel Dr. Chitale. He urged that in the instant case the plaintiff Bank has not acted in good faith and with due diligence in crediting the proceeds to

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the account of the defendant No. 1 inasmuch as there is no authority either by way of express or implied contract between them and the defendant No. 1. In support of this submission he relied on certain passages in Halsbury's Laws of England. In Halsburv's Law of England, 4th Edn. in paragraph 22 1 (page 186) the author says:

"Bank as holder for value. A banker who is asked-by a customer to collect a cheque and who. pursuant to a contract express or implied to do so. credits the customer forthwith with the amount of the cheque before the proceeds are received, in fact receives the sum for himself and not for the customer; but he has the same statutory protection in such circumstances as if he had received payment of the cheque for the customer.

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Every holder is deemed to be a holder in due course; but. if the instrument is shown to be affected by fraud. a banker dealing with it must show that he gave value in good faith subsequent to the fraud. The status of holder for value may be claimed by the bank; where cash has been given for the cheque over the counter; where the cheque is paid in introduction of an overdraft. where the cheque is paid in on the footing that it may be at once drawn against, whether in fact it is drawn against or not; or where the cheque is subject to a lien. However, the mere existence of an overdraft. though the banker's lien in respect thereof makes him a holder for value to the extent of that lien, would not preclude the protection.

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A banker who gives value for. or has a lien on, a cheque payable to order which the holder derives to him for collection without endorsing it as such, if any rights as he would have had if, upon delivery, the holder has endorsed the cheque in blank. A banker taking such a cheque is the holder thereof and. if the requisite conditions are present, a holder for value or in due course. It is not essential that the cheque be credited to the account of the holder."

Yet another important passage in paragraph 222 reads as under:

"222. Crediting as cash. The mere fact that the banker has

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credited the cheque in his customer's account before receiving the proceeds does not deprive him of protection against the true owner in the event of his customer having no title. or a defective title, to the cheque. Crediting the customer's account does not of itself alter the position of the banker from that of agent for collection to that of holder

for value. It is a question of fact in each case. In order to constitute the banker a holder for value on his ground there must be a contract, express or implied, that the customer should be entitled to draw against the amount of the cheque before it is cleared.

If the banker becomes a holder for value. he may. in the absence of a forged endorsement and unless the cheque is crossed 'not negotiable' sue upon a cheque in his own name as a holder in due course and may debit the customer if the cheque is dishonoured., He may apparently plead that he is a holder for value as against the person claiming as true owner, except where the endorsement is forged or the cheque is marked 'not negotiable.'"

(emphasis supplied)

The above two passages indicate that the Banker who is asked to collect a cheque can credit the customer with the amount before the proceeds are received and if he has acted in good faith he has the necessary statutory protection and crediting the customer account does not by itself alter his position but that however is a question of fact in each case namely whether there was such a contract express or implied that the customer should be entitled to draw against the amount of cheque before it is cleared.

In A.L. Underwood Ltd. v. Bank of Liverpool and Martins, Same v. Barclays Bank, [1924] All. E.R. 230 at page 241 Atkin, L.J. dealing with the protection that can be availed by a banker in such case, observed as under:

"It is sufficient to say that the mere fact that the bank. in their books. enter the value of the cheques on the credit side of the account on the day on which they receive the cheques for collection. does not, without more. constitute the bank a holder for value. To constitute value there must be in such a case a contract between banker and customer. express or implied. that the bank will, before receipt of the

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proceeds. honour cheques of the customer drawn against the cheques. Such a contract can be established by course of business and may be established by entry in the customer's pass book, communicated to the customer and acted upon by him. Here there is no evidence of any such contract."

(emphasis supplied)

To the same effect is the ratio laid down in Baker v. Barclays Bank Ltd.. [1955] 2 All E.R. 571. After applying the dictum of Atkin, L.J. in Underwood's case it is observed therein that "it was not enough to show merely that the bank had entered the value of the cheques on the credit side of the account on which the bank received the cheques. To constitute value there must be in such a case a contract between banker and customer, express or implied, that the bank will before receipt of the proceeds honour cheques of the customer drawn against the cheques."

We find another passage in the above decision at page 581 which reads thus:

"What is suggested is that the bank did not give value. and the question arises which often arises in cases of this sort. namely, whether, when a cheque is given to a bank in these circumstances, the bank takes the cheque giving value for and then becoming a holder in due course, or whether the bank takes the cheque merely to collect the amount of the cheque for someone else.

That is a question of fact. The true relationship has to be inferred from the acts of the parties."

(emphasis supplied)

From the above discussion it emerges that the Indian

definition imposes a more stringent condition on the holder in due course then the English definition and as the learned authors have noted the definition is based on Gill's 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
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Court to decide whether the negligence on 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 Section 118(g) gets rebutted under the circumstances mentioned therein than 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.

In the instant case there is sufficient evidence establishing the fact that the defendants were allowed credit facilities upto a limit of Rs.35,00.000 by the Bank and this fact is not in dispute. The pledging of the title deed by 5th defendant of her properties with the bank with an intention to create an equitable mortgage to secure the repayment of the amounts due from 1st defendant and the fact that a pronote for an amount of Rs.35,00,000 executed by defendant Nos. 2 to 4 in favour of the 5th defendant was endorsed in favour of the plaintiff Bank would establish that there was an express contract for providing the credit facilities. It should therefore necessarily be inferred that there is also an implied contract to credit the proceeds of the cheques in favour of defendant No. 1 to his account before actually receiving them. As a question of fact this aspect is established by the evidence on record. In such a situation the plaintiff need not make enquiries about the transactions of supply of goods etc. that were going on between defendants Nos. 1 and 6. Even if defendant No. 1 has not supplied the goods in respect of which the cheque in question were issued by defendant No. 6 there was no cause at any rate sufficient cause for the plaintiff to doubt the title of defendant No. 1 nor can it be said that the plaintiff acted negligently disregarding 'red flag' raising suspicion. Viewed from this background it cannot be said that there was sufficient cause to doubt the title nor there is scope to infer gross negligence on the part of the plaintiff.

There is no material which amounts to rebuttal of the presumption in his favour as provided under Section 118(g). On the other hand. the plaintiff has discharged the necessary burden to the extent on him and has proved that he is a holder in due course for valid consideration. Therefore, we hold that he could validly maintain an action
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against all the defendants including defendant No. 6. Therefore, we affirm the judgments of the courts below and dis-

miss the appeal. In the circumstances of the case, parties
are directed to bear their own costs throughout.

Y. Lal Appeal dismissed.

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JUDIS