

APPELLATE CIVIL.

Before Lord-Williams and Nasim Ali JJ.

W. D. JORDON

2.

MAHADEOLAL AND BROTHERS.*

1934

March 21, 23.

Insolvency—Undischarged insolvent—Prosecution after discharge, Legality of—Provincial Insolvency Act (V of 1920), ss. 71, 72 (2).

Where an insolvent had obtained credit after his adjudication but before his discharge, the court had no jurisdiction to make an order under section 72 (2) of the Provincial Insolvency Act for his prosecution after the insolvent had been discharged.

Orders under the provisions of this section can be made only at some time prior to the date of the discharge of the insolvent and during his insolvency.

APPEAL FROM ORIGINAL ORDER by the insolvent.

The facts of the case and the arguments in the appeal appear in the judgment.

Abinashghandra Ghosh and Shacheendrakumar Ray for the appellant.

R. C. Bonnerjee and Binaykrishna Ghosh for the respondents.

Cur. adv. vult.

LORT-WILLIAMS J. This is an appeal from an order made on the 4th February, 1933, under section 72 (2) of the Provincial Insolvency Act.

The insolvent was adjudicated on the 10th March, 1928, obtained the credit alleged on the 28th December, 1929, and was discharged on the 2nd April, 1932.

The only substantial point raised on appeal is whether the court had jurisdiction to make an order

*Appeal from Original Order, No. 156 of 1933, against the order of T. Roxburgh, District Judge of Midnapore, dated Feb. 4, 1933.

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under the section, after the insolvent had been discharged. In our opinion, the court had no such jurisdiction. Orders under the provisions of this section can be made only at some time prior to the date of the discharge of the insolvent, and during the insolvency. This is clear from the terms of the section, which would be grammatically inappropriate if they had been intended to apply to a discharged insolvent, who had committed such an offence during his insolvency, and prior to his discharge. Moreover, that this was the intention of the legislature is plainly indicated by the fact that section 71 provides for the criminal liability of the insolvent after his discharge, but only for the offences specified in section 69 and not for the offence specified in section 72 (1); whereas, under the analogous sections 102, 103, 104 and 105 of the Presidency-towns Insolvency Act, and section 162 of the English Bankruptcy Acts, 1914 and 1926, it has been provided that the insolvent shall be liable for all such offences without distinction, in spite of the fact that he has been discharged.

The result is that this appeal must be allowed with costs, and the order of the District Judge set aside. Hearing fee two gold *mohurs*.

NASIM ALI J. I agree.

Appeal allowed.

G S.