

APPELLATE CRIMINAL.

Before Derbyshire C. J. and Mukherjea J.

MADAN MOHAN SARKAR

1938

April 5.

v.

EMPEROR.*

Appeal—Appeal against an order making a complaint by a Judge in Insolvency, Competency of—Provincial Insolvency Act (V of 1920), ss. 69, 70, 75—Code of Criminal Procedure (Act V of 1898), s. 476B.

No appeal lies against an order of a District Judge under s. 70 of the Provincial Insolvency Act by which a complaint is made against an insolvent of an offence punishable under s. 69, without leave either of the District Judge or the High Court as contemplated by s. 75 (3).

Section 476B of the Code of Criminal Procedure has no application to such a case.

CRIMINAL APPEAL.

The facts giving rise to the present appeal were as follows. On April 18, 1936, the appellant Madan Mohan Sarkar was adjudged insolvent by the District Judge of Bogra and a local pleader was appointed the receiver of his estate. On April 8, 1937, the receiver submitted a report to the effect that the insolvent was not only giving no assistance to the receiver in the administration of his estate as required by s. 22 of the Act, but was putting obstacles in the way of the receiver and had made away with parts of his properties, namely, produce of his lands, some money, *etc.*, in order to diminish the assets available for distribution amongst the creditors. On receipt of that report, the learned Judge issued a notice on the appellant to show cause why he should not be prosecuted under s. 69 of the Act and on December 21, 1937, after considering the cause shown the learned Judge made a complaint to the Subdivisional Officer of Bogra for necessary action. From the said order the appellant preferred this appeal under s. 476B of the Code of Criminal Procedure.

*Criminal Appeal, No. 73 of 1938, against the order of S. N. Modak, District Judge of Bogra, dated Dec. 21, 1937.

Ajit Kumar Dutt and Sudhansu Bhusan Sen with them *Suresh Chandra Talukdar* for the appellant.

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Prabodh Chandra Chatterjee for the Crown

DERBYSHIRE C.J. In my opinion, this appeal is misconceived. It is an attempt to appeal against an order of the District Judge, sitting in insolvency, made under s. 70 of the Provincial Insolvency Act. The District Judge has made a preliminary enquiry and, consequent on that, he has made a complaint to the Magistrate so that the Magistrate should deal with it under ss. 69 and 70 of the Act. If there is any appeal against such an order, and I, for my part, am not prepared to say that there is, it seems to me that it must be under s. 75, sub-s. (3) of the Act, *i.e.*, only by leave of either the District Courts or the High Court. Such leave has not been obtained.

Again, speaking for myself, I am of the opinion that a very strong case would be needed to justify the granting of such leave, because it would be tantamount to stopping the proceedings under ss. 69 and 70 *in limine* and before the facts have been fully enquired into by a Magistrate. Such procedure would, in my view, be contrary to the policy of the insolvency Acts in so far as they relate to alleged offences against the insolvency laws.

In my opinion this appeal must be dismissed.

MUKHERJEA J. I agree with my Lord, the Chief Justice, in holding that this appeal should be dismissed.

The appeal is directed against an order purporting to be made by the District Judge of Bogra under s. 70 of the Provincial Insolvency Act by which he made a complaint of certain offence punishable under s. 69 of the Provincial Insolvency Act to the Sub-divisional Magistrate of Bogra for necessary action. It appears that the appellant was adjudged an insolvent by an order of the insolvency Court dated April 18, 1936. A receiver was appointed in due

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course and he made a report on April 8, 1937, making certain complaints against the insolvent on the ground that the latter, far from assisting the receiver in the administration of the estate, was putting obstacles in his way.

Two specific allegations were contained in this report. One was that the receiver had served a registered notice upon the insolvent requiring him to do certain things with regard to his property, but that the insolvent deliberately refused to accept the notice. In the second place, it was said that with a view to diminish the funds, which are to be divided among his creditors, the insolvent had made away with some portion of the assets. The District Judge, after hearing the insolvent and holding a preliminary enquiry, under s. 70 of the Provincial Insolvency Act, made the complaint mentioned aforesaid and it is against this order that the present appeal has been directed.

I agree with my Lord, the Chief Justice, in holding that the appeal is incompetent. Obviously it is not against an order passed under s. 69 of the Provincial Insolvency Act and, even if it were, there would be no appeal under the provisions of the amending Act XII of 1927. The order was clearly one under s. 70 of the Provincial Insolvency Act, and it is not one of the orders specified in Sch. I to the Act, against which alone appeals are competent under s. 75. Of course, the appellant could have prayed for and obtained leave under cl. (3) of s. 75, but this was not done, and no circumstances have been made out which would justify us in granting leave at this stage. Section 70 was introduced by the legislature in the year 1927 and obviously the object was that the insolvency Court should not itself try the offences which are specified in s. 69 of the Provincial Insolvency Act, but that these offences should be tried by Magistrates on complaints preferred by insolvency Courts, on the lines similar to those contained in the Criminal Procedure Code.

Mr. Dutt who appears for the appellant attempted to show that an appeal would lie under the provision of s. 476B of the Code of Criminal Procedure. But this contention, in my opinion, is manifestly untenable. Section 476B cannot have any application to a case where the complaint was not made under s. 476 of the Code of Criminal Procedure. The language of s. 70 makes it perfectly clear that after a complaint has been made by the insolvency Court to the Magistrate, the further proceedings should be regulated in the manner contemplated by the Criminal Procedure Code. If the proceedings end in a conviction obviously the accused would have a right of appeal as is provided for in the Criminal Procedure Code.

Under these circumstances, I agree that the appeal is incompetent and must be dismissed.

Appeal dismissed.

A. C. R. C.

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