

## APPELLATE CIVIL.

*Before Mr. Justice Sadasiva Ayyar and Mr. Justice Napier.*

IYAPPA NAINAR (PETITIONER), APPELLANT,

*v.*

MANICKA ASARI (RESPONDENT), RESPONDENT.\*

1914.  
August  
6 and 11.

*Provincial Insolvency Act (III of 1907), ss. 43 (2) (b) and 46 (1) and (2)—Creditor's petition to inquire into commission of an offence—Inquiry and refusal to frame a charge—Appeal, right of.*

In the course of a proceeding in insolvency, a creditor filed a petition alleging the commission of an offence by the insolvent and asking the Court to take action against him under section 43, clause (2) (b) of the Provincial Insolvency Act (III of 1907). The Judge inquired into the petition but dismissed it, refusing to frame a charge.

*Held*, that the creditor had no right of appeal, as he is not a "person aggrieved" within the meaning of section 46 of the Act.

APPEAL against the order of F. H. HAMNETT, the District Judge of South Arcot, in Insolvency Appeal No. 421 of 1912, in Insolvency Petition No. 7 of 1911.

The facts of the case appear from the judgment.

*T. M. Krishnaswami Ayyar* for the appellant.

*T. Narasimha Ayyangar* for the respondent.

SADASIVA  
AYYAR AND  
NAPIER, JJ.

JUDGMENT.—This is an appeal under section 46, clause (2) of the Provincial Insolvency Act, from an order of the District Judge of South Arcot dismissing a petition put in by a creditor asking the Court to take action against an insolvent under section 43, clause (2) (b) of the Act. A preliminary objection is taken that a creditor has no right of appeal in that he is not "a person aggrieved" by the order within the meaning of section 46 (1). In *Kadir Baksh v. Bhawani Prasad*(1), a Judge of a Small Cause Court refused to take action under section 359 of the Code of Civil Procedure against an insolvent and a revision petition was entertained by the High Court against the order at the instance of a creditor. This however does not assist the appellant as in revision the Court acts *suo motu*. It

\* Civil Miscellaneous Appeal No. 190 of 1913.

(1) (1892) I.L.R., 14 All., 145.

has been held in the matter of *Rash Behari Roy v. Bhughwan Chunder Roy*(1), under the Insolvent Act 11 & 12 Vict., cap. 21, that section 50 should be administered as the criminal law is administered and specific charges framed, and this has been the practice of this Court. What the Court has done in effect is that it has taken cognizance, inquired into an allegation of a criminal offence and refused to frame a charge. Under no principle of criminal law is a complainant entitled to appeal against such refusal as, in all criminal proceedings, the Crown is in theory the prosecutor, and we see no reason why a different principle should prevail where the criminal jurisdiction is exercised by a Civil Court. Under the Bankruptcy Act, 1883, the Court has power to commit—*vide* section 165. Section 164 (2) gives an appeal in bankruptcy matters “at the instance of any person aggrieved.” Section 73 of the Indian Insolvent Act gave an appeal by way of petition to the Supreme Court from any proceeding of the Commissioner at the instance of any person “who shall think himself aggrieved.” We have not been referred to any case under either of these Acts or earlier Bankruptcy Acts in England, where a creditor has been held “a person aggrieved” by the refusal of the Court, nor can we find any such case. The absence must be attributable to the principle above stated, and in that view the preliminary objection must be upheld and the appeal dismissed with costs.

ITYAPPA  
NAINAR  
v.  
MANICKA  
ASARI.  
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SADASIYA  
AYYAR AND  
NAPLIER, JJ.

N.R.

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(1) (1890) I.L.R., 17 Calc., 209.