

1913

EMPEROR  
v.  
GOPAL  
SINGH.

committed by Raghunandan Singh through the warrant issued by the Bombay Police, and such information may well be described as credible information. The case relied on by the learned counsel for the applicants does not apply, as the offence in the case was not a cognizable offence. I think that the constable and the chaukidar were within their rights and were discharging their duty in their attempt to arrest Raghunandan Singh, and if in the discharge of their duties they were obstructed by the applicants, the offence of the latter falls under section 353 of the Indian Penal Code. The application fails and is rejected.

*Application rejected.*

## APPELLATE CIVIL.

*Before Mr. Justice Ryves and Mr. Justice Piggott.*

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November, 7.

MUL CHAND (PLAINTIFF) v. MURARI LAL AND OTHERS (DEFENDANTS)\*  
*Act No. III of 1907 (Provincial Insolvency Act), sections 20, 22, 46—Civil Procedure Code (1908), order XXI, rule 58—Insolvency—Property taken by receiver as property of insolvent—Objection by third party claiming to be owner—Procedure—Appeal.*

A receiver appointed under the Provincial Insolvency Act, 1907, took possession, at the instance of one of the creditors, of certain property which was believed to be that of the insolvent. A third party came into court and applied under order XXI, rule 58, of the Code of Civil Procedure, claiming the property as his, and, when his application was rejected, appealed to the High Court.

*Held* that the applicant's proper remedy was under section 22 of the Provincial Insolvency Act, and that an appeal did not lie as of right, but only by leave of the District Court or of the High Court.

*Quære* whether an Additional District Judge to whom a matter under the Provincial Insolvency Act had been made over by the District Judge was a "District Court" within the meaning of the Act?

In this case two persons, Nathu Mal and Fakir Chand, had applied in the court of the District Judge of Meerut to be declared insolvents. The District Judge made over the proceeding for disposal to the Second Additional Judge, who proceeded to adjudicate the applicants insolvents and to appoint a receiver. The receiver, at the instance of one of the creditors, proceeded to annex certain movable property consisting of cash and cloth, as being that of the insolvents, acting in this respect under section 20 of the

\* First Appeal No. 115 of 1913 from an order of Mubarak Husain, Second Additional Judge of Meerut, dated the 14th of February, 1913.

Provincial Insolvency Act. One Mul Chand, who claimed the property as his own, presented to the Additional Judge an application under order XXI, rule 58, of Code of Civil Procedure, praying that the property might be delivered to him. This application was rejected, and he thereupon filed a regular appeal from order in the High Court.

Dr. *Surendra Nath Sen*, for the appellant.

Munshi *Damodar Das* and Pandit *Uma Shankar Bajpai*, for the respondents.

RYVES, and PIGGOTT, JJ:—This appeal arises out of certain proceedings the nature of which has to a certain extent been misconceived both by the courts below and by the appellant in filing this appeal.

We find that two persons, Nathu Mal and Fakir Chand, had applied in the court of the District Judge of Meerut to be declared insolvents. That court made over the proceeding for disposal to the Second Additional Judge of Meerut, who proceeded to adjudicate Fakir Chand and Nathu Mal insolvents and to appoint a receiver on the 23rd of November, 1912. This receiver, on information laid by one of the creditors, seized certain movable property, i.e. some cash and a stock of cloth, as property of the insolvents in order to dispose of the same for the benefit of the creditors. He was undoubtedly acting under the provisions of section 20 of the Provincial Insolvency Act (Act No. III of 1907), and as a matter of fact in this particular matter he acted under the orders of the District Judge.

Mul Chand, who is the appellant before us, claims that the property thus seized by the receiver is his own. He presented, in the court below, what purports to be an objection under order XXI, rule 58, of the Code of Civil Procedure. This has no application to the circumstances of the case. Mul Chand's position was that of a person aggrieved by an act of the receiver and his remedy was by an application under section 22 of Act No. III of 1907. His application was, however, dealt with by the Second Additional Judge of Meerut on the merits, and after taking evidence the learned Additional Judge came to the conclusion that the property seized was in fact that of the insolvents, and he dismissed Mul Chand's application accordingly.

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The latter has now come before this Court in appeal. He still persists in treating the matter as an execution proceeding under the Code of Civil Procedure, for he has presented this appeal as a matter of right and without any reference to the provisions of sections 22 and 46 of the Provincial Insolvency Act on the subject of appeals. An examination of these sections, however, suggests two questions. One is whether the court of the Second Additional Judge of Meerut is or is not a "District Court" within the meaning of the definition in Act No. III of 1907. If it is not, then an appeal from the order complained of lay to the District Judge. We have not thought it necessary to go into this question, for the matter may be disposed of upon another ground. Even if we assume for the sake of argument that the court of the Second Additional Judge was a "District Court" under the Provincial Insolvency Act, an appeal would only lie from the order complained of by special leave of the District Court or of this Court. We have before us no formal application for leave to appeal. We have heard the appellant on the facts of the case, in order to see whether he could make out any sufficient cause for inducing us to allow him to amend his pleadings and bring the matter before us in regular form by an application for leave to appeal.

We are content to find that there is nothing in the circumstances of this case to suggest any reason why special leave should be given. A matter such as this is evidently one which the Legislature intended to leave to the discretion of the District Court. Under such circumstances, leave to appeal should only be granted in special cases, and we find nothing in the record before us to justify us in treating this as a special case.

In these circumstances, we dismiss this appeal with costs.

*Appeal dismissed.*