MISCELLANEOUS CIVIL

Before Justice Sir Lal Gopal Mukerji and Mr. Justice Rachhpal Singh

1933
April, 3

KUNDAN LAL (PLAINTIFF) *v.* NATHU (DEFENDANT)*

Provincial Insolvency Act (*V of* 1920), *section* 44(2)—*Effect of discharge, as against a creditor without notice of the insolvency proceedings—Insolvency Rules framed by High Court, rule* 34—*Proclamation of insolvency proceedings—Notice.*

The rule of law enacted by section 44(2) of the Provincial Insolvency Act, namely that an order of discharge shall release the insolvent from all debts provable under the Act, is not qualified by any rule that the creditor should have notice of the proceedings. The rule is based on a policy of law and not on any rule of constructive notice. Where no question of fraud is involved, the fact that a creditor had no notice of the insolvency proceedings does not prevent the operation of section 44(2) as against him, and the order of discharge releases the insolvent from the debt provable under the Act which was due to the creditor.

It may be desirable, in the interests of justice, that the rules should provide for some advertisement or proclamation of insolvency proceedings.

Mr. *I. B. Banerji*, for the plaintiff.

Dr. *N. C. Vaish*, for the defendant.

MUKERJI and RACHHPAL SINGH, JJ.:—This is a reference by the learned Judge, small cause court of Jhansi, in the following circumstances: The plaintiff Kundan Lal sued the defendant Nathu for recovery of a sum of Rs.137-12-0 on foot of a promissory note dated the 31st of May, 1929, executed for Rs.82. The defendant put up two defences. One was that the real holder of the promissory note was not Kundan Lal but his master Ram Prasad; and that the defendant had been discharged from insolvency and that therefore the suit was not maintainable. The learned Judge found that there was no evidence before him to prove that

*Miscellaneous Case No. 467 of 1932.

Kundan Lal was not the real holder of the promissory note but his master was. Then the learned Judge proceeded to consider the effect of Nathu having been declared an insolvent and subsequently discharged, but finding himself unable to come to a clear decision referred the matter to us.

The question has been formulated as follows: How does the fact of the defendant being a discharged insolvent affect the case?

On the last occasion when the case came before us, we sent for the record of the insolvency case so that we might be in full possession of the facts relating to it. It appears that Nathu made an application for being declared an insolvent on the 31st of May, 1930, and in the list of creditors he mentioned one Ram Prasad and mentioned Rs.82 as the amount of the debt payable to him. We find many acknowledgments on the record that the notice issued to Ram Prasad was received by one Kundan Lal, who signed himself as the mukhtar-i-am of Ram Prasad. If it were of any importance in this case to decide the point, we might notice that the signature of Ram Prasad in the pen of Kundan Lal seems to be similar to the signature of Kundan Lal himself in the petition of plaint in the small cause court suit. However, we have not to decide any question of fact but only the question of law. After notices were issued to the creditors mentioned in the schedule attached to the petition, and without any publication of notice in the local official gazette or in any local newspaper, Nathu was given a discharge.

The case of Kundan Lal is that he never heard of the proceedings in insolvency and could not have possibly proved his debt in those proceedings. The question is whether in the circumstances Kundan Lal's debt has become unenforceable although he had no notice of the proceedings.

For an answer to the question we have to look to the rules of law enacted under the Provincial Insolvency

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Act. Section 42 deals with discharge and section 44 mentions the result of discharge. Under section 44, sub-clause (2) "an order of discharge shall release the insolvent from all debts provable under this Act." There are certain exceptions, but this case does not fall within any of the exceptions. This rule of law, namely an order of discharge shall release the insolvent from all debts provable under this Act, is not qualified by any rule that the creditor should have notice of the proceedings. In our opinion the rule is based on a policy of law and not any rule of constructive notice. Notice or no notice, therefore, the section 44 comes into play and releases the insolvent from the debt in question which could undoubtedly have been proved under the Act. There is no question of fraud involved in the case and we need not express any opinion on that point. This view seems to be in consonance with the English decision in *Elmslie* v. *Corrie* (1) which is based on sections 49 and 125 of the Bankruptcy Act of 1869.

Mr. *I. B. Banerji*, who appears for the creditor, has drawn our attention to rule 34 framed by this High Court under section 79 of the Provincial Insolvency Act and has urged that it would be in the interest of justice to modify the rule to this extent that at least some advertisement might appear in a local newspaper and that some steps might be taken to proclaim the insolvency proceedings by beat of drums in the locality in which the insolvent resides. We think that there is some force in this proposal and a copy of our judgment will be circulated for the information of the learned Judges of this Court so that, if necessary, the rule may be amended.

Coming back to the point in question we see no reason to hold that the discharge was dependent on notice being given to the plaintiff. The result would be the same even if the omission of the name of Kundan Lal was

(1) (1878) 4 Q.B.D., 295.

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deliberate on the part of the insolvent, provided, of course, no question of fraud is involved. Our answer, therefore, to the question framed by the learned Judge of the small cause court is that the defendant is discharged from the liability under the promissory note in suit.

APPELLATE CRIMINAL

Before Mr. Justice Young and Mr. Justice Thom

EMPEROR *v.* UJAGAR AND OTHERS*

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Witness—Testimony of perjured witness should be entirely discarded and not used for any purpose—Evidence—Degree of proof—Not affected by degree of gravity of the charge—Quantum of evidence—Communal riot cases—Evidence Act (I of 1872), section 134—Oath, efficacy of.

The evidence of a witness proved to have committed perjury is of no value whatsoever and cannot be used for any purpose; that is, by itself, or to corroborate or be corroborated by truthful evidence.

There is only one standard of proof for all charges, and that is that the Crown must prove the charge beyond all reasonable doubt. The nature of the sentence cannot affect the question of proof. Where the accused was charged with murder and arson, and the evidence both on the murder charge and the arson charge was precisely the same, but the Sessions Judge thought that a lesser standard of proof might be applied to the arson charge but that a higher standard was necessary for convicting on a capital charge and inflicting an irrevocable sentence, and gave the accused the benefit of doubt in respect of the murder charge but convicted him on the arson charge, it was *held* that the benefit of the doubt should have been given on both charges.

In communal riot cases it is unsafe to convict on the evidence of one witness alone, unless there is satisfactory circumstantial evidence in addition.

The oath administered in Indian courts to Indian witnesses is of an unsatisfactory nature.

Mr. *K. D. Malaviya*, for the appellants.

*Criminal Appeal No. 34 of 1932, from an order of H. J. Collister, Sessions Judge of Cawnpore, dated the 28th of November, 1931.