

CIVIL REVISION.

Before Mr. Justice Leach.

1937

May 28.

MAUNG TUN TIN *v.* K.P.A.R. CHETTYAR FIRM.*

Insolvency—Refusal of insolvency Court to prosecute insolvent—Appeal against order—"Person aggrieved"—Creditor not a person entitled to demand prosecution—Provincial Insolvency Act (V of 1920), ss. 69, 70, 75.

No appeal lies to the District Court by a creditor against an order of an insolvency Court refusing to institute a prosecution against the insolvent under s. 70 of the Provincial Insolvency Act. A person aggrieved must be a man against whom a decision has been pronounced which has wrongfully refused him something which he had a right to demand. A creditor has not the right to demand that an insolvent shall be prosecuted and he is not aggrieved within the meaning of s. 75 when the Court refuses to prosecute.

Ladu Ram v. Mahabir Prasad, I.L.R. 39 All. 171; *Ex parte Sidebotham*, 14 Ch. Div. 458, followed.

Gujar Shah v. Barkat Ali, I.L.R. 1 Lah. 213; *Iyappa v. Manichra*, I.L.R. 40 Mad. 630; *Ex parte Official Receiver, In re Reed*, 19 Q.B.D. 174, referred to.

Thet Tun for the petitioner.

P. N. Ghosh for the respondent.

LEACH, J.—This is an application for the revision of an order of the District Court of Maubin directing the prosecution of the applicant for alleged fraudulent concealment of property. The applicant was adjudicated an insolvent by the Assistant District Court of Maubin on the 3rd January 1936 on his own petition. No assets were disclosed in the schedule. In August of last year the respondent, who is a creditor, filed an application asking the Assistant District Court to treat certain paddy land standing in the name of the insolvent's wife Ma Thet May, as land in which the insolvent had a half interest and further asking that the insolvent be prosecuted under section 69 of the

* Civil Revision No. 30 of 1937 from the order of the District Judge, Maubin in Civil Misc. Appeal No. 15 of 1936.

Provincial Insolvency Act on a charge of having concealed this asset. The learned Assistant District Judge held that the title to the property had yet to be decided. Ma Thet May's father claimed it as his *damaugya* land, explaining that he had allowed it to stand in his daughter's name since she was a girl. In the circumstances the learned Assistant District Judge was not satisfied that there was a case for the filing of a complaint and pointed out that if the respondent wished to carry the matter further he could do so by putting the receiver in funds for the purpose of filing a suit to decide the insolvent's title to the disputed land. Accordingly he refused to sanction a prosecution.

Against this decision the respondent appealed to the District Court under section 75 of the Act. The learned District Judge considered that there was sufficient evidence on the record to justify the Court directing the applicant to be prosecuted. Consequently he ordered a complaint to be filed against him under sections 69 and 70 of the Provincial Insolvency Act. The learned District Judge went further and directed that a half share in the land should be put up to sale as being the property of the insolvent. The applicant contends that in adopting this course the learned District Judge erred in two respects. In the first place he says that no appeal lies from an order refusing to institute a prosecution, and in the second place he says that there were not sufficient evidence on the record to justify the learned District Judge in coming to a definite finding that the applicant had a half share in the disputed property.

It seems to me that the contention that no appeal lies in such a case is well-founded. Section 75 of the Act allows an appeal to "the debtor, any creditor, the receiver or any other person aggrieved by a decision given, or an order made, in the exercise of the

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insolvency jurisdiction by a Court subordinate to the District Court." It will be noticed that the appeal only lies where the debtor, or the creditor, or the receiver, or other person is aggrieved. It does not allow an appeal by a creditor unless he is aggrieved. Now can it be said that the respondent was aggrieved within the meaning of the section by the order of the learned Assistant District Judge refusing to sanction a prosecution? In my opinion he was not.

In *Ex parte Sidebotham* (1) James L.J. said that a person aggrieved must be a man who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived him of something, or wrongfully refused him something, or wrongfully affected his title to something. This was a case under the English Bankruptcy Act, 1869 and it was held that when a Court had refused to act on a report by the comptroller in bankruptcy that the trustee in a bankruptcy had been guilty of a misfeasance, or omission, by which the estate had sustained a loss which the trustee ought to make good, neither the bankrupt nor any of the creditors was entitled to appeal from the refusal. The comptroller alone was entitled to appeal. In *Ex parte Official Receiver. In re Reed, Bowen & Co.* (2) Lord Esher M.R. quoted this definition of James L.J. and added "It cannot mean wrongfully refusing him something, unless it be a refusal of something for which he had a right to ask, so that that definition of James L.J. would mean 'a person aggrieved must be a man against whom a decision has been pronounced which has wrongfully refused him something which he had a right to demand'." A creditor has not the right to demand that an insolvent shall be prosecuted. He may call the attention of the

(1) 14 Ch. Div. 458.

(2) 19 Q.B.D. 174.

Court to the facts, but it is for the Court to decide whether it shall itself institute proceedings. It is a matter which lies entirely within the discretion of the Court.

I agree with the opinion expressed by Walsh and Stuart JJ. in *Ladu Ram v. Mahabir Prasad* (1) that a person aggrieved by such an order as the one complained of can only be aggrieved as a member of the public is aggrieved by a decision in a case of which he does not approve. But this did not give a right of appeal and the Madras High Court and the Lahore High Court have held the same. See *Iyappa Naniar v. Manichra Asari* (2) and *Gujar Shah v. Barkat Ali Shah* (3). It has been contended that as these cases were decided under the Act of 1907 and as section 75 of the present Act is not the same as section 46 of the Provincial Insolvency Act, 1907, they no longer apply. In the Act of 1907 the right of appeal was given to "any person aggrieved." As I have already pointed out in the present Act the right is given to "the debtor, any creditor, the receiver or any other person aggrieved." I do not consider however that this amendment in the section makes any difference. The creditor to have a right of appeal must be aggrieved by the order and he is not aggrieved in law when the Court in the exercise of its discretion refuses to prosecute the insolvent.

This application therefore succeeds on the point of law, and it is not necessary to express any opinion on the facts. The order of the District Court will be reversed and the order of the Assistant District Court restored with costs three gold mohurs.

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(1) (1916) I.L.R. 39 All. 171.

(2) (1914) I.L.R. 40 Mad. 630.

(3) (1919) I.L.R. 1 Lah. 213.