

APPELLATE CIVIL.

Before Sir Ernest H. Goodman Roberts, Kt., Chief Justice,
and Mr. Justice Blagden.

1940

Apl. 2.

K. A. RAMASWAMY NAIDU

v.

A. Y. LAZARUS.*

Insolvency—Suspension of discharge, two kinds of—Suspension of discharge for a specified time—Order of appropriation—Punishment of debtor—Securing payment to creditors—Rangoon Insolvency Act, ss. 39 (1) (b), 60 (2).

Under s. 39 of the Rangoon Insolvency Act suspension of discharge must be either for a specified time or else for a period which will elapse when four annas in the rupee have been paid to the creditors.

In suspending the discharge for a specified time under s. 39 (1) (b) the Insolvency Court can add to the order an appropriation order under s. 60 (2) of the Act, i.e. an order for payment of a part of the monthly salary of the insolvent to the Official Assignee during such period.

Bola Ram v. Sohan Singh, I.L.R. 13 Ran. 355; *Re Walmstey*, 98 L.T. 55, referred to.

Per BLAGDEN, J.—Suspension or refusal of a discharge is in the nature of a punishment and that is the object of s. 39 of the Act. But another object of the Act, not to be confused with the former, is to secure some measure of payment to the creditors of the particular insolvent and that is the object of s. 60 of the Act.

Bhattacharya for the appellant.

Dangali for the respondent.

ROBERTS, C.J.—This appeal must be allowed. With all respect, I feel that the learned Judge perhaps did not have put before him the provisions of section 60, sub-section (2), of the Rangoon Insolvency Act, and that the position in regard to section 39 of the Act was therefore rendered not quite clear.

In the case before Braund J. that learned Judge did not desire to refuse the discharge, but to take one of the other two courses open to him under section 39. And what section 39 enacts, so far as the two kinds of

* Civil Misc. Appeal No. 4 of 1940 from the order of this Court on the Original Side in Insolvency Case No. 92 of 1937.

suspension are concerned, is this; either that the suspension must be for a specified time, or, if the time is left vague, the suspension may be for a period which will elapse when four annas in the rupee has been paid to the creditors.

The learned Judge, in plain terms, suspended the discharge for a specified time, under section 39 (1) (b) of the Act, and, to put the matter in common place language, the insolvent then knew, when he left the Court, that he would get his discharge within thirty months. There was therefore no vagueness in the order.

At the same time, the learned Judge, acting under section 60 (2) of the same Act, having found that the insolvent was in receipt of a salary, to which the Act applied, made an order for payment of a part of it to the Official Assignee. This is known as an appropriation order, and the amount ordered to be paid was Rs. 35 a month. And the learned Judge was quite within his rights in adding to the order under section 39 (1) (b) an appropriation order under section 60 (2).

The learned Judge took quite a different course from that which he had taken some years before, in the case of *Bola Ram and others v. Sohan Singh* (1). In that case the Court, on appeal, found it necessary to allow an appeal from this learned Judge, who had then said :

“ * * * I take the view that this insolvent can and should pay twelve annas in the rupee. * * I shall accordingly suspend his discharge until twelve annas in the rupee is paid.”

The effect of that order would be that the insolvent leaving the Court might not know when he could pay twelve annas in the rupee and it would not be an order

1940
 NAIDU
 v.
 LAZARUS,
 —
 ROBERTS,
 C.J.

1940
 NAIDU
 v.
 LAZARUS.
 ROBERTS,
 C.J.

under section 39 (1) (b) suspending the discharge for a specified time at all, but suspending his discharge until a specified payment, exceeding four annas in the rupee, had been made, and, therefore, as the Court of appeal pointed out, was beyond his power.

Mr. Dangali has urged upon us that the effect of the order passed by the learned Judge in the present case will be the same as that passed in *Bola Ram and others v. Sohan Singh* (1), because the insolvent will not get his discharge until in fact the creditors, under the appropriation order, have received more than four annas in the rupee. But the whole point of the difference is this : that in the present case the insolvent knows that he is going to receive his discharge within a specified time. The order has been made under section 39 (1) (b), and the mere fact that the creditors are going to receive some part of their dues ought to be a matter of satisfaction rather than regret.

We have had the case of *Re Walmsley : Ex parte The Bankrupt* (2) cited to us, and there Phillimore J. said :

“There is no jurisdiction to suspend an order of discharge till two conditions have been satisfied, one of time and one of payment. There is, however, power to suspend for either, and to suspend for time and to attach conditions as to portion of the debtor's future earnings.”

That is exactly what has been done here. It was a suspension for a specified time, conditions having been attached, under the provisions of section 60 (2) of the Rangoon Insolvency Act, as to a portion of the debtor's future earnings, in the sense that an appropriation order under that section has been made.

The object of the Statute is not that insolvents should not pay a sum exceeding four annas in the

(1) (1935) I.L.R. 13 Ran. 355.

(2) 98 L.T. 55.

rupee, but that if they do so there should be a reasonable certainty in their minds as to the date on which they will get their discharge. That certainty exists here and, for those reasons, this appeal must be allowed with costs, advocate's fee in this Court three gold mohurs.

1940
 NAIDU
 v.
 LAZARUS.
 ROBERTS,
 C.J.

BLAGDEN, J.—An order suspending an insolvent's discharge for a definite time, an order suspending an insolvent's discharge until the insolvent pays four annas in the rupee, and an order of discharge conditional on judgment being entered, are each in the nature of a punishment. That is what section 39 (1) (b) of the Rangoon Insolvency Act is for. But punishment of insolvents and protection of the public against them are not the only objects of the Insolvency Act; another object is to try to secure some measure of payment to the creditors of the particular insolvent, and that is what section 60 of the Act is for.

In my opinion, the fallacy of Mr. Dangali's argument, which was both ingenious and ingenuous, is that it confuses punishment on the one hand and an attempt to secure payment on the other. A man is not punished because he is made to pay some portion of his just debts; his punishment is in so far as his discharge is suspended or refused. Here the Court imposed a particular punishment; that is not made any the worse, or made illegal, because the Court also did something else, namely, set aside a portion of the debtor's future pay for the benefit of the creditors.

In these circumstances I entirely agree with what my Lord has said.